

**IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2014-CA-00251**

**PATRICK HIGGINS**

**APPELLANT**

**v.**

**THE STATE OF MISSISSIPPI**

**APPELLEE**

**ON APPEAL FROM THE  
CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI  
No. 12,0030CI**

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**RECORD EXCERPTS OF APPELLEE**

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Alison O'Neal McMinn  
Miss. Bar No. 101232  
Special Assistant Attorney General  
Office of the Attorney General  
550 High Street, Suite 1100  
Post Office Box 220  
Jackson, Mississippi 39225-0220  
Telephone: (601) 359-3815  
Facsimile: (601) 359-2003  
aonea@ago.state.ms.us  
*Counsel for Appellee*

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# TAB 1

IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-KA-00124 COA

PATRICK HIGGINS A/K/A PATRICK J. HIGGINS  
A/K/A PATRICK JOSEPH HIGGINS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	12/19/94
TRIAL JUDGE:	HON. ISADORE W. PATRICK, JR.
COURT FROM WHICH APPEALED:	WARREN COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID P. OLIVER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS
DISTRICT ATTORNEY:	GILMORE G. MARTIN
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	GUILTY OF THREE COUNTS OF FELONY BAD CHECK; SENTENCED TO 3 YEARS ON EACH COUNT TO BE SERVED CONSECUTIVELY TO THE OTHER COUNTS FOR A TOTAL OF 9 YEARS, SUSPENDED UPON COMPLETION OF PROGRAM AT JACKSON COUNTY RESTITUTION CENTER
DISPOSITION:	REVERSED AND APPELLANT DISCHARGED -3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE BRIDGES, C.J., COLEMAN, AND DIAZ, JJ.

COLEMAN, J., FOR THE COURT:



R.E.000001

In the Circuit Court of Warren County, a jury found the appellant, Patrick Higgins, guilty of three counts of issuing and delivering "bad checks" in violation of Section 97-19-55 of the Mississippi Code of 1972.<sup>(1)</sup> Because the amounts of each of the three checks exceeded \$100, the trial judge sentenced Higgins to serve a term of three years on each count pursuant to the provisions of Section 97-19-67 of the Mississippi Code of 1972.<sup>(2)</sup> The trial judge ordered that Higgins serve these three sentences consecutively for a total of nine years, "suspended upon his completion of the program at the Jackson County Restitution Center." The court also levied a \$1000 fine for each count of felony bad check for a total of \$3000, but it suspended Higgins's payment of these fines on the condition that he pay Southern Lock & Key the sum of \$605.05, which represented the total of other checks drawn on the account of Delta Glass Repair, Inc., in what was then the First National Bank of Vicksburg, but is now Trustmark National Bank. As a part of Higgins's punishment, the trial court ordered him to make full restitution to Southern Lock and Supply Company. We reverse and render the trial court's judgment and sentencing order because we find that the evidence was insufficient to support the jury's verdict of Higgins's guilt of those three counts.

### I. FACTS

We recite the facts in the light most favorable to the evidence which the State adduced for the jury's consideration. Southern Lock and Supply Company (Southern), a wholesale distributor of security products such as locks, keys, and safe door closers, is located in Pinellas Park, Florida. Delta Glass Repair, Inc., (Delta) was a Mississippi corporation which was domiciled in Vicksburg, Mississippi. The appellant, Patrick Higgins, served as president and secretary of Delta, and Lynn Higgins, to whom Higgins was once married, served as Delta's treasurer. Southern maintained an open account for Delta. Delta purchased merchandise from Southern on its account, but when Delta experienced difficulty in paying its account, Southern began to send merchandise by United Parcel Service (UPS) cash on delivery. The address to which Southern sent each of Delta's orders was 106 Linda Drive, Vicksburg, Mississippi 39180, which was the address of Higgins's residence. UPS would return to Southern by mail Delta's checks which its delivery persons received when they made C.O.D. deliveries at that address.

Delta maintained a checking account in First National Bank of Vicksburg (FNBV), now Trustmark National Bank. Southern received Delta's check no. 15154 for \$434.01, dated August 20, 1993, in payment of an order which it had sent Delta via UPS, but FNBV returned this check to Southern with "ACCOUNT CLOSED" stamped on its front. Southern next received Delta's check no. 15155 for \$1,326.21, dated August 26, 1993, in payment of an order which it had sent Delta via UPS, but again FNBV returned this check to Southern with "ACCOUNT CLOSED" stamped on its front. Finally, Southern received Delta's check no. 15156 for \$1,313.84, dated August 27, 1993, in payment of an order which it had sent Delta via UPS, but for the third time, FNBV returned this check to Southern with "ACCOUNT CLOSED" stamped on its front.

Joan Hart, Southern's credit manager in Pinellas Park, Florida, called Higgins about these checks which FNBV had returned, and Higgins told her that she could re-deposit them. When the checks were again returned by FNBV, Higgins told Hart that he would send a cashier's check to cover them. Higgins sent one cashier's check in the amount of \$900 to Southern, but this amount paid for only two checks which FNBV returned and left a balance of \$16.82. Southern sent Delta a check in the amount of \$16.82 to refund this balance. The three bad checks for which Higgins was indicted did

not include these two checks which were paid from the proceeds of this \$900 cashier's check.

After the remaining three checks were not paid, Ms. Hart contacted the district attorney's office in Vicksburg and talked with Andrea Hunter in the bad check division of that office. Ms. Hunter sent Ms. Hart some forms entitled "15 Day Legal Notice Letters." Ms. Hart completed three of these forms, one for each of the three checks which FNBV had returned, and mailed them, certified mail, return receipt requested to "Delta Glass Repair, Inc., P. O. Box 820651, Vicksburg, MS 39182." These three letters, which were addressed to "Delta Glass Repair, Inc., 106 Linda Dr., Vicksburg, MS 39180,"<sup>(3)</sup> advised the recipient that "you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check . . . Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument . . . to the proper authorities for criminal prosecution." Section 97-19-57 of the Mississippi Code of 1972 requires that this notice be delivered to the accused prior to initiating criminal charges against the maker or drawer of the bad check. Southern received the return receipt for the delivery to Delta Glass Repair, Inc., which indicated that the letters had been delivered on September 28, 1993. The signature on the return receipt was hardly a scrawl, and the State made no effort to identify it as that of Higgins.

After Southern received the return receipt, Ms. Hart received a telephone call from Higgins, who offered to return some merchandise to trade for "some of the money of the checks," but Ms. Hart declined Higgins's offer because she "would have no way of knowing" whether the merchandise had come from Southern because she had never seen it. Ms. Hart received no further response from Higgins, so she notified Andrea Hunter with the district attorney's office that the three checks for which Higgins was later indicted had not been paid.

## II. TRIAL

After several conversations with Higgins or his attorney, Ms. Hunter arranged for a warrant to issue for Higgins's arrest on the three checks for which the grand jury subsequently indicted him in Warren County. Higgins's trial ensued on the three-count indictment. The State called three witnesses, who were Joan Hart, Southern's credit manager; James E. Stirus, Jr., Assistant Vice President and Security Officer for what was FNBV but is now Trustmark Bank; and Andrea Hunter, the Victims' Assistance Coordinator for the office of the district attorney, who also worked in the worthless check unit of that office. Ms. Hart's testimony on direct examination by the State was consistent with our recitation of the facts. Of interest to this Court is the following cross-examination by Higgins:<sup>(4)</sup>

Q. Have you ever seen the defendant before today in your life?

A. This is my first time.

....

Q. And do you have any knowledge as to who signed the checks?

A. No, sir. I do not.

Q. Do you have any knowledge as to who signed the green return receipt post card?

A. No, sir. I do not.

....

Q. And you have no personal knowledge of who signed that check?

A. No, Sir. I do not.

....

Q. What is my name?

A. Patrick Higgins.

Q. Do you have any personal knowledge of that, other than I'm the defendant in this action?

A. No, that's all.

Q. So you don't know if I'm Patrick Higgins, Sr., or Patrick Higgins, Jr.?

A. That's correct.

Q. Or even if I'm Patrick Higgins?

A. That's correct.

Q. You didn't see me write the checks?

A. No, sir. I did not.

Q. You didn't see the person -- whoever wrote the checks -- write the checks?

A. Right.

Q. And you didn't see anybody hand those checks to anybody?

A. That's correct.

A portion of the record pertaining to pre-trial motions indicates that Higgins had a four-year-old son named Patrick Higgins, Jr. The record further indicates that Higgins had listed his four-year-old son as the vice-president of Delta.

The State's second witness, James E. Stirgus, testified about Delta's commercial checking account with FNBV. He established that the account was opened on "9-24 of '92, 1992," and that it was closed "8-27-, 1993." Stirgus explained that the bank had closed the account because "[t]he account was non-sufficient funds, and we closed it because the account was in overdraft." The amount of the overdraft deficit was \$1,564.58. He then testified that the bank stamped the three checks for which Higgins had been indicted "Account closed" and sent them back to Southern because FNBV would not pay the checks. As an exhibit to Stirgus's testimony, the State introduced a copy of Delta's corporate resolution to open up a checking account. The resolution stated that Higgins as president and secretary; his wife, Lynn Higgins, as treasurer; and Patrick Higgins, Jr., his four-year-old son, as

vice-president, were authorized to sign checks drawn on Delta's commercial checking account.

On cross-examination, Stirgus answered the following questions by Higgins as follows:

Q. Okay. Do you know who wrote those checks?

A. I have no idea.

Q. Do you know who sent those checks?

A. Do I know who sent them?

Q. Yes.

A. No, sir.

Q. Do you know where they were written?

A. No, sir.

Q. Do you know what they were used in payment for?

A. No, sir.

The State's third and last witness was Andrea Hunter, who testified about her role in providing Ms. Hart with the necessary fifteen-day notices to mail about the bad checks and about her two telephone conversations with Higgins, the first of which occurred when Higgins was in the presence of the attorney who was then representing him. She then explained the procedure to collect bad checks which the office of the district attorney followed. Included in her explanation was the filing of criminal charges if the accused did not pay the checks.

As with the first two witnesses for the State, we quote the following excerpts from Higgins's cross-examination of Ms. Hunter:

Q. Is the signature, the signature of Patrick Higgins, Jr., or Patrick Higgins, Sr.?

A. Patrick Higgins--well, I don't know. It's kind of hard to read.

Q. Do you have any personal knowledge as to who signed those checks?

A. You did.

Q. Did you see me sign those checks?

A. No. I did not see you sign those checks.

Q. Did I ever tell you I signed those checks?

A. You never told me you didn't. I mean--

Q. Did I ever tell you that I signed those checks?



A. Not that I remember.

Q. So the truth of the matter is you don't know who wrote those checks, or who signed them--personal knowledge?

A. I did not see you write the checks. No.

....

Q. Did you see somebody write those checks?

A. No.

....

Q. How do you know whose signature that is? You testified that you have personal knowledge of the signature. How do you know whose signature that is?

A. Number one, you never told me that it wasn't your signature.

Q. Excuse me. Please, refer to the defendant as "the defendant."

A. The defendant never told me that it wasn't his signature. The defendant is the person who is the president of Delta Glass. I don't know how to answer that question.

....

Q. You didn't see anybody write those checks in August? You never saw those checks before February of '94?

A. No.

Q. So you have no idea who issued the checks, personal knowledge?

A. Other than the conversations that you and I had concerning you trying to take care of these checks, no, I did not see you write them.

Q. And you spoke to Mr. Higgins as a representative of Delta Glass Repair; is that correct?

A. Yes, sir.

Q. How do you know that the defendant is the president of Delta Glass?

A. Because he said so.

Q. He said it to you?

A. Yes, in my presence.

On re-cross examination, which the trial judge allowed because the State asked Ms. Hunter about whether she had personally met Higgins, Higgins again questioned her about how she knew the

checks had been written in Vicksburg. The record reflects the following:

Q. I have one last question. On these three checks that you have in front of you, how do you have personal knowledge of where those checks were written?

A. Where they were written?

Q. Yes.

A. Because it was COD -- the merchandise was --

Q. This is personal knowledge that you have. You saw them written in Vicksburg, Mississippi; is that correct?

A. No, I said I did not see you write those checks.

The State rested after Ms. Hunter testified, and Higgins then moved for a directed verdict "based on the fact that the State had not introduced enough evidence to sustain their burden of guilt beyond a reasonable doubt . . . ." After Higgins's very brief argument on the motion for directed verdict, the trial judge opined as follows:

These checks were dishonored as being closed account checks. They were not honored. A fifteen-day notice was issued by Southern Lock to the corporation of Delta Glass with the address given. Conversations were had with Mr. Higgins, the defendant, as testified to by Ms. Hart about the said checks. The inferences that can be drawn on this and also *the statute puts upon the defendant the presumption that* the said checks were indeed written in the State that the bank was drawn on; and that *the checks were indeed written by the defendant*; and that the presumption that the checks were written with the intent to defraud. That, however, is a rebuttable presumption. With that, the Court finds that there is prima facie evidence presented, sufficient prima facie evidence presented, to go forward on three counts of felony bad checks against the defendant, Patrick Higgins.

(emphasis added). Higgins rested after the trial judge denied his motion for directed verdict. Higgins submitted a peremptory instruction to find him not guilty, which the trial judge refused. In his motion for JNOV or, alternatively, a new trial, Higgins included the following reasons for granting him a new trial:

2. The Court erred in failing to grant the motion for directed verdict at the close of the State's case.

3. The Court erred in failing to grant a peremptory instruction to find the defendant not guilty.

....

8. The State failed to prove the defendant guilty beyond a reasonable doubt, as required by law.

The trial judge denied Higgins's motion for JNOV or, alternatively, a new trial, and he then appealed the trial court's judgment of his guilt and sentencing to the Mississippi Supreme Court, which then diverted this case to this Court.

### **III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUES**

#### **A. Recitation of the issues**

We recite Higgins's six issues as he composed and included them in his brief:

- 1. The State of Mississippi failed to prove that the crime as so described in the indictment occurred in Warren County, Mississippi.**
- 2. That there is a misjoinder of defendants in that the corporat[ion], Delta Glass Repair, Incorporated, was not indicted and further the State failed in its burden of proof to prove beyond a reasonable doubt that Patrick Higgins was in fact the person who signed the checks in question.**
- 3. That the court erred in allowing hearsay testimony; that is the witnesses to describe how UPS conducts [its] business and further how one witness was allowed to testify that the wife of Patrick Higgins told her that his son was a junior.**
- 4. That the court erred in not granting a judgment of acquittal to the defendant, Patrick Higgins, when the State introduced evidence from the bank records and in which the banker clearly stated that he never notified the corporation or Patrick Higgins that the account was closed and that there was no fraudulent intent upon Patrick Higgins.**
- 5. That the court erred in quashing two of Patrick Higgins's subpoenas, one to the Secretary of State and one to the Chancery Clerk's office violative of his constitutional rights per the Mississippi Constitution for compulsory process and per the United States Constitution.**
- 6. That the statutory presumption of fraudulent intent is unconstitutional and that Patrick Higgins personally never received any notice to him as mandated by Miss. Code Ann., Section 97-19-57.**

Because this Court agrees with Higgins that "the State failed in its burden of proof to prove beyond a reasonable doubt that Patrick Higgins was in fact the person who signed [and delivered] the checks," an argument that is the equivalent of asserting that the evidence was insufficient to support the jury's verdict of Higgins's guilt of all three counts contained in the indictment on which the State tried him, we need review no other issue.

#### **B. Standard of review**

In *Brooks v. State*, 695 So. 2d 593, 594 (Miss. 1997), the Mississippi Supreme Court again recited the following standard of review to be "applied when the assignment of error turns on the sufficiency of evidence":

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence -- not just that supporting the case for the prosecution -- in the light most consistent with the verdict. We give the prosecution the benefit of all inferences that

may reasonably be drawn from the evidence. If the facts and inferences so considered point[] in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is beyond our authority to disturb.

(citations omitted). This standard of review permits this Court to reverse the trial court's judgment of Higgins's guilt of three counts of "bad check fraud," only if it can say that "the facts and inferences [in the case *sub judice*] so considered point[] in favor of [Higgins] with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty . . . ." *See Brooks*, 695 So. 2d at 594. However, if this Court is persuaded that the evidence lacked that sufficient force, then "reversal and discharge are required." *See id.*

"[I]n a criminal prosecution, the State has the burden of proving beyond a reasonable doubt each element of the offense charged." *Bullock v. State*, 447 So. 2d 1284, 1286 (Miss. 1984). In *Bullock*, the issue was whether the State's evidence sufficiently established the crime of cattle theft apart from the appellants' confession to the crime. *Id.* at 1285. The appellants maintained "that the state utterly failed to meet its burden of proving the elements of the crime charged beyond a reasonable doubt." *Id.* at 1285-86. The supreme court held that the State had failed to prove the elements of cattle theft beyond a reasonable doubt without their confessions. *Id.* at 1287. The supreme court explained:

Once the jury has returned a verdict of guilty in a criminal case, we have no authority to order discharge of the defendant unless the evidence, taken in the light most favorable to the verdict, is such that on one or more elements of the offense charged, no reasonable hypothetical juror could have found against the defendant beyond a reasonable doubt.

On the other hand, where the evidence is such that on one or more elements of the offense charged no reasonable hypothetical juror could have resolved the issue against the defendant beyond a reasonable doubt, we have no authority to affirm. In that event, it becomes our duty to order that the defendant be discharged.

*Id.* at 1286-87 (citations omitted).

### C. Elements of bad check fraud established by Section 97-19-53

Section 97-19-55 of the Mississippi Code of 1972 makes it unlawful "for any person with fraudulent intent to make, draw, issue, . . . or deliver any check . . . for the payment of money drawn on any bank . . . for the purpose of obtaining . . . any article of value . . . knowing at the time of making, drawing, issuing, uttering or delivering said check, draft or order that the maker or drawer has not sufficient funds in or on deposit with such bank . . . ." Miss. Code Ann. § 97-19-55 (Rev. 1994). A fundamental element of the State's burden of proof in the case *sub judice* was to establish that Higgins was the person who made and delivered the three checks for which the grand jury had indicted him.

We have quoted at length from the transcript of the testimony in this case to demonstrate that two of

the State's witnesses, Joan Hart and James E. Stirgus, Jr., both testified under Higgins's cross-examination that they did not know who had written and delivered the three checks. Andrea Hunter could only testify in response to Higgins's cross-examination that "Number one, you never told me that it wasn't your signature." We again recite this snippet of her cross-examination by Higgins:

Q. Did I ever tell you that I signed those checks?

A. Not that I remember.

Q. So the truth of the matter is you don't know who wrote those checks, or who signed them--personal knowledge?

A. I did not see you write the checks. No.

No witness was able to identify the signatures on the three checks as Higgins's. Ms. Hart, Southern's credit manager, could only establish that she sent the merchandise to the address of 106 Linda Drive, Vicksburg, Mississippi 39180, which was the address of Higgins's family's residence in Vicksburg.<sup>(5)</sup> The most that Ms. Hunter, the employee of the district attorney's office, could establish was that Higgins had talked to her about satisfying Delta's debt to Southern which the checks returned by FNBV to Southern had created. It is not reasonable to infer that Higgins had made, issued, and delivered any of the three checks from Ms. Hunter's testimony that Higgins did not tell her that the signatures were not his. Especially should this be true since she admitted that she could not remember if Higgins ever told her that he had signed any of the checks.

In our inclusion of the trial judge's opinion denying Higgins's motion for a directed verdict which he made after the State had rested its case, we emphasized his language that "the statute puts upon the defendant the presumption that . . . the checks were indeed written by the defendant." It is correct that Section 97-19-62(1) of the Mississippi Code of 1972 provides:

In any prosecution or action under the provisions of section 97-19-55, a check, draft or order for which the information required in subsections (2) and (3) of this section is available at the time of issuance, utterance or delivery shall constitute prima facie evidence of the identity of the party issuing, uttering or delivering the check, draft or order and that such person was a party authorized to draw upon the named account.

**Miss. Code Ann. § 97-19-62(1) (Rev. 1994).** However, to invoke "the prima facie evidence of the identity of the party issuing . . . or delivering the check . . . and that such person was a party authorized to draw upon the named account," the party who receives such check must request "[t]he presenter's name, residence address and home phone number," and

[i]n addition to the information required in subsection (2) of this section, the party receiving the check, draft or order shall witness the signature or endorsement of the party presenting such instrument and, as evidence of such, the receiving party shall initial the instrument.

**Miss. Code Ann. § 97-19-62(2) - (3) (Rev. 1994).**

The record in the case *sub judice* is devoid of any evidence that Ms. Hart, the credit manager for Southern, which received these three checks for which Higgins was indicted, attempted to comply in

any fashion with the requirements of Section 97-19-62(2) and (3) to invoke the "prima facie evidence of the identity of the party issuing, uttering or delivering the check" provision which Section 97-19-62(1) contains. Thus, because the State provided no evidence from which to invoke the provisions of Section 97-19-62, we decline to accept the trial judge's opinion that "the statute puts upon the defendant the presumption that . . . the checks were indeed written by the defendant."

#### **D. Summary of the issue**

The State bore the burden of proving the identity of the maker and drawer of the three checks for which Higgins was tried. Two of the three State's witnesses admitted that they did not know who made and delivered these checks, and the testimony of its third witness, Ms. Hunter, hardly established that Higgins had written and delivered the checks. Because there was no evidence that Higgins was the person who had written and delivered these checks, "no reasonable hypothetical juror could have resolved the issue [of whether Higgins had written and delivered the three checks in question] against [him] beyond a reasonable doubt. Thus, the standard of review gives this court "no authority to affirm" the trial court's judgment of Higgins's guilt and its sentences, and it therefore "becomes our duty to order that [Higgins] be discharged." *See Bullock*, 447 So. 2d at 1287. This Court accordingly reverses and renders the trial court's judgment of Higgins's guilt of three counts of bad check fraud and its sentences for those convictions.

**THE JUDGMENT OF THE WARREN COUNTY CIRCUIT COURT OF CONVICTION OF THREE COUNTS OF FELONY BAD CHECK AND SENTENCES WHICH IT IMPOSED ON THE APPELLANT ARE REVERSED AND APPELLANT DISCHARGED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO WARREN COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**

1. Section 97-19-55 provides:

It shall be unlawful for any person with fraudulent intent to make, draw, issue, utter or deliver any check, draft or order for the payment of money drawn on any bank, corporation, firm or person for the purpose of obtaining money, services or any article of value, or for the purpose of satisfying a preexisting debt or making a payment or payments on a past due account or accounts, knowing at the time of making, drawing, issuing, uttering or delivering said check, draft or order that the maker or drawer has not sufficient funds in or on deposit with such bank, corporation, firm or person for the payment of such check, draft or order in full, and all other checks, drafts or orders upon such funds then outstanding.

Miss. Code Ann. § 97-19-55 (Rev. 1994).

2. Section 97-19-67 (c) and (d) prescribe the following sentences:

(c) Upon commission of a third or any subsequent offense of violating [Section 97-19-55], regardless of the amount of the check, draft or order involved, and regardless of the amount of the checks, drafts or orders involved in the prior convictions, the person committing such

offense shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term of not less than one (1) nor more than five (5) years.

(d) Where the check, draft or order involved shall be One Hundred Dollars (\$100.00) or more, the person committing such offense, whether same be a first or second offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the State Penitentiary for a term of not more than three (3) years, or by both such fine and imprisonment, in the discretion of the court. Upon conviction of a third or any subsequent offense, the person convicted shall be punished as is provided in the immediately preceding paragraph hereof.

**Miss. Code Ann. § 97-19-67(c) - (d) (Rev. 1994).**

3. Hart testified that she sent the three letters to the address of 106 Linda Drive, Vicksburg, Mississippi, but the return receipt and receipt for certified mail contains the address of P. O. Box 820651, Vicksburg, MS 39182. When the State inquired of Ms. Hart on direct examination, "[a]nd where did that address come from?" Ms. Hart explained, "That was probably on one of his checks."

4. The record reflects that while Higgins conducted his own defense, a member of the Vicksburg Bar sat with him and advised him during the trial. The record lists this attorney as "Legal Advisor."

5. The record might not contain this information had not the trial judge asked Higgins during the course of the trial if that was his home address.

# TAB 2





**MANDATE**  
From The  
**COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

To the Warren County Circuit Court - GREETINGS:

On 10th Day of March 1998, in proceedings held in the City of Jackson, Mississippi, the Court of Appeals of the State of Mississippi entered a final judgment as follows:

Court of Appeals Case #95-KA-00124-COA

Trial Court Case #11703

Patrick Higgins a/k/a Patrick J. Higgins a/k/a Patrick Joseph Higgins

vs.

State of Mississippi

The judgment of the Warren County Circuit Court of conviction of three counts of felony bad check and sentences which it imposed on the appellant are reversed and appellant discharged. All costs of this appeal are assessed to Warren County.

TUESDAY, MAY 12, 1998:

Motion for rehearing denied. Order entered.

THURSDAY, JULY 23, 1998:

DISPOSITION OF THE MISSISSIPPI SUPREME COURT: Petition for Writ of Certiorari filed by the State of Mississippi denied. To Deny: Prather, C.J., Sullivan and Pittman, P.JJ., Banks, Roberts, Mills and Waller, JJ. To Grant: McRae and Smith, JJ. Order entered.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

WITNESS, the Hon. Billy G. Bridges, Chief Judge of the Court of Appeals of the State of Mississippi; also the signature of the Clerk and the Seal of said Court hereunto affixed, in the City of Jackson, on August 13, 1998, A.D.

ATTEST  
A True Copy  
This the 11th day of Dec 2012  
[Signature]  
Office of the Clerk  
Supreme Court and Court of Appeals  
State of Mississippi  
90 [Signature]

Charlotte B. Williams, Clerk  
Court of Appeals of the  
State of Mississippi



R.E.000013

# TAB 3

1 General Docket, Civil Cases, Circuit Court, Warren County Circuit Cler  
=====

No. 12,0030-CI

CFN 29178

PATRICK J. HIGGINS  
Vs.

Counsel for Plaintiff

Counsel for Defendant

STATE OF MISSISSIPPI

JUDGE M. James Chaney, Jr.

=====

DATE	ORDERS, JUDGMENTS, ETC.	EK/PG
2/22/2012	COMPLAINT FOR WRONGFUL CONVICTION AND IMPRISONMENT	
2/22/2012	MOTION TO PROCEED IN FORMA PAUPERIS	
3/13/2012	ORDER(DENYING FORMA PAUPERIS)	A183 57
5/04/2012	NOTICE OF APPEARANCE	
5/04/2012	AMENDED COMPLAINT	
5/08/2012	SUMMONS ISSUED TO ATTORNEY	
5/08/2012	RECEIPT	
5/14/2012	PERSONAL SERVICE ON ATTORNEY GENERAL 5/10/12	
6/13/2012	ORDER VACATING ERRONEOUS FILING OF COMPLAINT & ORDER DENYING PAUPER STATUS	A185 714
6/22/2012	ORDER	A186 94
	mailed to Patrick Higgins 7-9-12	
7/11/2012	ANSWER	
7/13/2012	AGREED ORDER	A186 502
	emailed to attys 7-13-12	
12/13/2012	NOTICE OF SERVICE OF PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION TO DEFENDANT	
12/20/2012	PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	
12/20/2012	MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	
12/27/2012	DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	
12/27/2012	DEFENDANT'S MEMORANDUM OF AUTHORITITES IN SUPPORT OF ITS RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	
12/28/2012	DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	
12/28/2012	DEFENDANT'S MEMORANDUM OF AUTHORITIES IN SUPPORT OF ITS RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	
1/09/2013	Agreed Order of Trial Setting	A191 740
1/09/2013	Scheduling Order	A191 741
1/09/2013	NOTICE OF SERVICE	
2/19/2013	ENTRY OF APPEARANCE	
3/07/2013	SUBPOENA DUCES TECUM ISSUED TO ATTORNEY	
3/07/2013	SUBPOENA RETURNED SERVED ON CLERKS OFFICE CHASITY WRIGHT ON MAR 7, 2013	
3/27/2013	NOTICE OF HEARING	
4/26/2013	PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT	
5/01/2013	ENTRY OF APPEARANCE	
5/03/2013	ORDER	195 364
5/06/2013	NOTICE OF SERVICE	
5/06/2013	NOTICE OF SERVICE	
5/06/2013	MOTION TO WITHDRAW AS COUNSEL OF RECORD	
5/16/2013	AGREED ORDER AMENDING SCHEDULING ORDER	195 679

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R.E.000014

2 General Docket, Civil Cases, Circuit Court, Warren County Circuit Cler  
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No. 12,0030-CI

CFN 29178

PATRICK J. HIGGINS  
Vs.

Counsel for Plaintiff

Counsel for Defendant

STATE OF MISSISSIPPI

JUDGE M. James Chaney, Jr.

=====

DATE	ORDERS, JUDGMENTS, ETC.	BK/PG
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\*\* CONTINUED FROM PREVIOUS PAGE \*\*

5/17/2013 SUBPOENA DUCES TECUM ISSUED TO ATTY.  
5/29/2013 SUMMONS RETURNED ON MDOC VIA KEVIN JACKSON 5/22/13  
6/03/2013 LETTER  
6/18/2013 NOTICE OF SERVICE OF SUPPLEMENTAL RESPONSES TO WRITTEN DIS-  
COVERY  
6/24/2013 NOTICE OF SERVICE  
6/24/2013 NOTICE OF SERVICE  
6/24/2013 ENTRY OF APPEARANCE  
6/25/2013 NOTICE OF TELEPHONIC VIDEO TRIAL DEPOSITION  
6/26/2013 NOTICE OF TELEPHONIC VIDEO TRIAL DEPOSITION  
6/28/2013 MOTION TO EXTEND THE DISCOVERY DEADLINE FOR THE PURPOSE OF  
CONDUCTING TO TRIAL DEPOSITION OF LYNN HIGGINS  
6/28/2013 AMENDED MOTION TO EXTEND THE DISCOVERY DEADLINE FOR THE  
LIMITED PURPOSE OF CONDUCTING THE TRIAL DEPOSITION OF  
LYNN HIGGINS  
7/01/2013 NOTICE OF HEARING  
7/03/2013 RESPONSE IN OPPOSITION TO AMENDED MOTION TO EXTEND THE  
DISCOVERY DEADLINE  
7/03/2013 PLAINTIFF'S MOTION TO QUASH NOTICE OF DEPOSITION  
7/03/2013 AGREED NOTICE OF HEARING  
7/03/2013 NOTICE OF SERVICE  
7/09/2013 REBUTTAL IN SUPPORT OF AMENDED MOTION TO EXTEND THE  
DISCOVERY DEADLINE FOR THE LIMITED PURPOSE OF CONDUCTIN  
THE TRIAL DEPOSITION OF LYNN HIGGINS  
7/09/2013 RESPONSE IN OPPOSITION TO PLAINTIFFS MOTION TO QUASH  
NOTICE OF DEPOSITION  
7/09/2013 SUBPOENA ISSUED TO ATTORNEY  
7/11/2013 MOTION TO STRIKE STATES RESPONSE TO PLAINTIFFS MOTION TO  
QUASH NOTICE OF DEPOSITION  
7/11/2013 DEFENDANTS SUPPLEMENTAL RESPONSE TO PLAINTIFFS FIRST SET  
OF INTERROGATORIES AND REQUESTS FOR PRODUCTION  
7/11/2013 DEFENDANTS THIRD SUPPLEMENTAL RESPONSE TO PLAINTIFFS  
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION  
7/16/2013 PERSONAL SERVICE ON KEVIN MASSEY 7/15/13 (NO SASE SENT TO  
RETURN COPY)  
7/19/2013 NOTICE OF TELEPHONIC VIDEO TRIAL DEPOSITION  
7/22/2013 ORDER  
7/23/2013 MOTION TO DECLARE JOAN HART AN UNAVAILABLE WITNESS  
7/25/2013 SUBPOENA ISSUED TO ATTORNEY GENERAL  
8/07/2013 NOTICE OF SERVICE  
8/12/2013 PERSONAL SERVICE ON KEVIN MASSEY, SECURITY SUPERVISOR  
8/15/2013 NOTICE OF SERVICE

197 292

\*\* CONTINUED ON NEXT PAGE \*\*

R.E.000015

2

3 General Docket, Civil Cases, Circuit Court, Warren County Circuit Cler

No. 12,0030-CI

CFN 29178

PATRICK J. HIGGINS  
Vs.

Counsel for Plaintiff

Counsel for Defendant

STATE OF MISSISSIPPI

JUDGE M. James Chaney, Jr.

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DATE	ORDERS, JUDGMENTS, ETC.	BK/PG
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\*\* CONTINUED FROM PREVIOUS PAGE \*\*

8/21/2013	MOTION FOR CONTINUANCE OF TRIAL	
8/26/2013	DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR CONTINUANCE OF TRIAL	
8/26/2013	SUBPOENAS TO APPEAR AND TESTIFY AT TRIAL (4)	
8/27/2013	AGREED NOTICE OF HEARING	
8/27/2013	REPLY IN SUPPORT OF MOTION TO CONTINUE TRIAL	
8/30/2013	DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR CONTINUANCE OF TRIAL	
9/12/2013	ORDER RESETTING TRIAL	198 651
12/03/2013	SUBPOENA DUCES TECUM ISSUED TO ATTORNEY (4)	
12/11/2013	MOTION IN LIMINE TO LIMIT IMPEACHMENT PURSUANT TO MRE 609(B)	
12/11/2013	MOTION IN LIMINE TO EXCLUDE TESTIMONY OF LYNN HIGGINS	
12/12/2013	NOTICE OF HEARING OF MOTIONS IN LIMINE	
12/12/2013	RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTIONS IN LIMINE	
12/12/2013	PRE-TRIAL ORDER	201 245
1/21/2014	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	
1/21/2014	NOTICE OF FILING	
1/21/2014	PLAINTIFF'S TRIAL BRIEF CONCERNING MISS. CODE ANN. 97-19-57	
1/21/2014	PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	
1/24/2014	OPINION AND ORDER	202 275
2/06/2014	NOTICE OF FILING	
2/24/2014	NOTICE OF APPEAL	
3/04/2014	DESIGNATION OF THE RECORD	
3/04/2014	CERTIFICATE OF SERVICE	
3/26/2014	LETTER CONCERNING COST OF TRANSCRIPT	
4/10/2014	MOTION TO ALLOW APPELLANT TO PAY COURT COSTS AND TRANSCRIPT IN INSTALLMENTS	
4/15/2014	MOTION TO DISMISS APPEAL FOR FAILURE TO COMPLY WITH RULES	
4/15/2014	RESPONSE IN OPPOSITION TO MOTION TO ALLOW APPELLANT TO PAY COURT COSTS AND COST OF TRANSCRIPT IN INSTALLMENTS	
5/22/2014	SUPREME COURT ORDER	205 576
5/27/2014	RECEIPT FOR ESTIMATES AND COPY OF CHECK RECEIVED 5/27/2014	
9/23/2014	RECEIPT	
10/01/2014	NOTICE TO TRIAL COURT CLERK	
11/10/2014	CHECK	



CERTIFIED AND ATTESTED A TRUE COPY  
This 19 DAY OF Dec 2014  
JAN HYLAND DAIGRE, CIRCUIT CLERK  
BY Christy Law D.C.

R.E.000016

3

**TAB 4**

## IN THE CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI

PATRICK J. HIGGINS

PLAINTIFF

VS.

CIVIL ACTION NO. 12,0030-CI

STATE OF MISSISSIPPI

DEFENDANT

PRE-TRIAL ORDER

The parties have conferred and agree upon the following terms of this Pre-Trial

Order.

1. Counsel:  
For the Plaintiff(s):

David Neil McCarty, MSB 101620  
DAVID NEIL MCCARTY LAW FIRM, PLLC  
416 E. Amite Street  
Jackson, MS 39201  
T: 601-874-0721  
E: dnmlaw@gmail.com

Graham P. Carner, MSB 101523  
GRAHAM P. CARNER, PLLC  
771 N. Congress Street  
Jackson, MS 39202  
T: 601-949-9456  
F: 601-354-7854  
E: graham.carner@gmail.com

For the Defendant(s):

Malissa Wilson Winfield, MB #100751  
Alison E. O'Neal, MB # 101232  
SPECIAL ASSISTANT ATTORNEYS GENERAL  
Office of the Attorney General  
Civil Litigation Division  
Post Office Box 220  
Jackson, MS 39205-0220  
Telephone No. (601)359-3824  
Facsimile No. (601) 359-2003  
[mwils@ago.state.ms.us](mailto:mwils@ago.state.ms.us)  
[aonea@ago.state.ms.us](mailto:aonea@ago.state.ms.us)

2. The Nature of the case is (negligence, contract, etc.):

Plaintiff, Patrick Higgins, filed suit under Mississippi's Wrongful Conviction Statute, Miss. Code Ann. §11-44-1, *et seq.*, seeking compensation for allegedly being wrongfully convicted and imprisoned by the Defendant, State of Mississippi.

3. The pleadings are amended to conform to this Pre-Trial Order.

4. The following claims (including the claims in the complaint, counterclaims, cross-claims, third party claims, etc.) have been filed:

Plaintiff's claim for compensation under Miss. Code Ann. §11-44-1, *et seq.*

5. The following motions remain pending: (If none, enter "none." Pending motions not noted here may be deemed moot.)

- a. Defendant's Motion To Declare Joan Hart An Unavailable Witness is pending; Plaintiff has withdrawn opposition to the Motion.
- b. Plaintiff's Motion in Limine to Limit Impeachment; this Motion may be moot pending agreement of the Parties
- c. Plaintiff's Motion in Limine to Exclude the Testimony of Lynn Higgins; this Motion may be moot pending agreement of the Parties

6. A concise summary of the ultimate facts claimed:

By the Plaintiff(s):

Patrick Higgins was an officer and operator of a business, Delta Glass Repair, Inc. ("Delta Glass Repair"). He was married to Lynn Higgins. Delta Glass Repair was, generally speaking, a locksmith and windshield repair business. Delta Glass Repair was incorporated on or about September 1, 1992. On or about September 16, 1992, Delta Glass Repair opened a business account bearing account number 126-707-2 with First National Bank of Vicksburg.

In 1993, Delta Glass Repair did business with Southern Lock & Supply, a company in Florida that was a wholesale supplier for businesses such as Delta Glass Repair. Southern Lock & Supply would send Delta Glass Repair merchandise "C.O.D." and Delta Glass Repair would send payment to Southern Lock & Supply.



In August of 1993, Delta Glass Repair sent three checks to Southern Lock & Supply that are at issue in this case. All three checks were from Delta Glass Repair's commercial account with First National Bank of Vicksburg. Check number 15154 was dated August 20, 1993, and made payable in the amount of \$434.01. Check number 15155 was dated August 26, 1993, and made payable in the amount of \$1,326.21. Check number 15155 was dated August 27, 1993, and made payable in the amount of \$1,313.84. At the time the checks were drawn, Mr. Higgins believed that the account had sufficient funds to cover the checks.

Unbeknownst to Mr. Higgins and Delta Glass Repair, the account at First National Bank of Vicksburg was closed by the bank on August 27, 1993. When Southern Lock & Supply attempted to negotiate the checks, First National Bank of Vicksburg returned them to Southern Lock & Supply marked "account closed."

Mr. Higgins attempted to return the merchandise related to the above three payments, but Southern Lock & Supply refused to let him do so. Mr. Higgins also made efforts to pay off the checks, including placing his house on the market. However, Andrea Hunter of the Warren County District Attorney's Office testified that she informed Southern Lock & Supply not to accept partial payment of the alleged debts.

In the meantime, Mr. Higgins' wife filed for divorce. The combination of circumstances resulted in an inability to immediately pay off the checks. This, coupled with Southern Lock & Supply's unwillingness to allow Higgins to return the merchandise, resulted in Mr. Higgins not being able to immediately make payment on the checks.

However, at no time did Mr. Higgins have any intent to defraud Southern Lock & Supply. The entire episode was a mistake that was compounded by other circumstances whereby Mr. Higgins owed a debt. Rather than treat the matter as a civil dispute, which it rightly was, Southern Lock and Supply proceeded with criminal charges.

Mr. Higgins was indicted for three counts of violating Miss. Code Ann. § 97-19-55. He was convicted of all three counts following a jury trial held on December 5, 1994. He was sentenced on December 16, 1994.

Mr. Higgins' conviction was reversed and rendered by the Mississippi Court of Appeals on March 10, 1998. Following the denial of the State's Motion for Rehearing and Petition for Writ of Certiorari, the Mandate issued in Higgins' case on August 13, 1998. Mr. Higgins was continuously in custody from the date of his conviction through the date of the issuance of the Mandate.

By the Defendant(s):

On or about September 16, 1992, Patrick Higgins opened a business account bearing account number 126-707-2 for Delta Glass Repair with First National Bank of Vicksburg. In 1993, Higgins contacted Southern Lock and Supply, a company based out of Pinellas Park, Florida that sells locksmith supplies at wholesale, to place an order for various locks. Joan Hart, who at the time was the credit manager at Southern Lock and Supply, assisted Higgins with his telephone order.

Following Hart's conversation with Higgins, Hart sent the merchandise by United Parcel Service (UPS) cash-on-delivery to 106 Linda Drive in Vicksburg, Mississippi where Higgins resided. UPS, in turn, sent back to Hart First National Bank checks numbered 15154, 15155 and 15156 ("the subject checks"), which were marked "account closed." James Stirgus, Jr., who at the time was employed by First National Bank of Vicksburg, testified that the business account for Delta Glass was marked "account closed" on August 27, 1993 because it was in overdraft by \$1,564.58.

Following receipt of the dishonored checks, Hart contacted Plaintiff about the matter. She understood that Plaintiff would deposit funds into the account to cover the subject checks. Instead, Plaintiff sent her a \$900 cashier's check, which was only sufficient to cover two other checks, and not the subject checks.

Hart contacted the District Attorney's office, and she spoke with Andrea Hunter, who was the Victim Assistance Coordinator with the District Attorney's worthless check unit. In response, Hunter talked with Higgins both personally, as well as by telephone, about honoring the checks.

In light of Higgins's unresponsiveness, Hunter instructed Hart to provide Higgins with a 15-day legal notice, pursuant to Miss. Code Ann. § 97-19-57, which requires him to pay the full amount of the dishonored checks within 15-days from receipt of the notice. Consistent with these instructions, Hart sent, by certified mail to the same address where she sent the merchandise, a 15-day legal notice for each dishonored check. Hart followed up on the legal notices by speaking with Higgins over the telephone about the matter.

Higgins offered to Hart to exchange "some merchandise" for value. Hart did not accept this offer since she did not know the condition of this merchandise or whether the merchandise was even the company's.

None of the three checks at issue here were ever honored by Higgins, despite attempts to work with Higgins to honor the checks by Hart and Hunter prior to issuing a warrant for his arrest for writing bad checks. A jury subsequently found Higgins guilty of three counts of writing bad checks. He was given a three-year sentence for each count to serve concurrently and a \$3,000 fine.

7. Facts established by pleadings, admissions or stipulations:

1. Higgins resided at 106 Linda Drive in Vicksburg, Mississippi.
2. Higgins opened a business account bearing account number 126-707-2 for Delta Glass Repair with First National Bank of Vicksburg on September 16, 1992.
3. The post office box for Delta Glass Repair was no. 820651, Vicksburg, Mississippi 39182.
4. Higgins purchased locks from Southern Lock and Supply, a company based out of Pinellas Park, Florida that sells locksmith supplies at wholesale.

5. The merchandise at issue here was sent cash-on-delivery by Southern Lock, via United Parcel Service, and delivered to 106 Linda Drive in Vicksburg, Mississippi.
6. Checks from the business account of Delta Glass Repair bearing check numbers 15154, 15155 and 15156 were received by Southern Lock as payment for the merchandise at issue.
7. Higgins signed the checks bearing check numbers 15154, 15155 and 15156.
8. The business account for Delta Glass Repair was closed by First National Bank on August 27, 1993.
9. Checks numbered 15154, 15155, and 15156 were marked "account closed" and dishonored.
10. Southern Lock never received payment to cover the cost of the merchandise at which was tendered in exchange for the 3 checks.
11. A jury found Higgins guilty of three counts of issuing and delivering the three dishonored checks in violation of Miss. Code Ann. § 97-19-55. Mr. Higgins was convicted on December 5, 1994. He was given a three-year sentence for each count to serve concurrently and a \$3,000 fine.
12. On December 16, 1994, Mr. Higgins was sentenced to a term of imprisonment following his conviction.
13. Mr. Higgins' conviction was reversed and rendered by the Mississippi Court of Appeals on March 10, 1998, due to insufficiency of evidence.
14. The Court of Appeals denied the State's Motion for Rehearing, and the Mississippi Supreme Court denied the State's Petition for Writ of Certiorari.
15. The Court of Appeals' Mandate was issued on August 13, 1994.
16. The reversal and rendering of the conviction resulted in the dismissal of the accusatory instrument.
17. Mr. Higgins was released from prison after the issuance of the Mandate.

18. Following the conviction at issue, Higgins was continually incarcerated for 44 months and 2 weeks.

8. Contested issues of fact are as follows:

1. Whether Higgins knew that the Delta Glass Repair account had been closed at the time that the three dishonored checks were issued.
2. Whether Higgins received the three 15-day legal notices sent for each of the dishonored checks.
3. The total amount of compensation, if any, due to Mr. Higgins under Miss. Code Ann. § 11-44-7(2)(a).

9. Contested issues of law are as follows:

1. Whether Higgins can prove by a preponderance of the evidence that (a) he did not commit the felonies for which he was convicted or (b) the acts or omissions for which plaintiff were sentenced did not constitute a felony.
2. Whether "mistake" is a legal defense to the underlying criminal charge in light of Miss. Code Ann. § 97-19-57 (Bad checks; presumption of fraudulent intent; notice that check has not been paid; notice returned undeliverable as evidence of intent to defraud).

10. The following is a list and brief description of all exhibits (except exhibits to be used for impeachment purposes only) to be offered in evidence. Each exhibit has been marked for identification and made available to all counsel for examination:

A. Exhibits to be offered by Plaintiff(s):

P-1	First National Bank of Vicksburg, check No. 15154
P-2	First National Bank of Vicksburg, check No. 15155
P-3	First National Bank of Vicksburg, check No. 15156
P-4	Mississippi Court of Appeals Opinion dated March 10, 1998
P-5	Certified Docket Sheet from Mississippi Supreme Court
P-6	Certified Mandate from Mississippi Supreme Court

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity and/or admissions of any of the preceding exhibits are objected to, the exhibit must be identified below along with a statement of specific grounds for said objections.

B. Exhibits to be offered by Defendant(s):

D-1	First National Bank of Vicksburg, check No. 15154
D-2	First National Bank of Vicksburg, check No. 15155
D-3	First National Bank of Vicksburg, check No. 15156
D-4	Receipt of Certified Mail, dated 9/23/1003 Objection: irrelevant, no foundation
D-5	15-Day Legal Notice Letter, dated 9/22/1993 re: check no. 15154 Objection: irrelevant, no foundation
D-6	15-Day Legal Notice Letter, dated 9/22/1993 re: check no. 15155 Objection: irrelevant, no foundation
D-7	15-Day Legal Notice Letter, dated 9/22/1993 re: check no. 15156 Objection: irrelevant, no foundation
D-8	Corporate Resolution for Opening or Continuing a Bank Account and Authorizing Withdrawals Therefrom, dated 9/10/1992
D-9	Letter from J. Hart to P. Higgins, dated 11/12/1993 Objection: irrelevant, no foundation, prejudicial
D-10	Waiver of Rights Form, dated 6/28/1994 Objection: irrelevant, no foundation, cumulative
D-11	Fingerprint Form, dated 6/28/1994 Objection: irrelevant, no foundation, prejudicial, cumulative
D-12	Letter from P. Higgins to A. Hunter, dated 7/30/1997 Objection: irrelevant, no foundation, barred by MRE 404(b), no probative value to any claim or defense in this civil case
D-13	Mississippi Vehicle Retail Installment Contract, dated 7/7/1992 Objection: irrelevant, no foundation, cumulative
D-14	Statement from P. Higgins, dated 12/8/1994
D-15	Deposit Guaranty National Bank, check no. 1043 Objection: irrelevant, no foundation, prejudicial, barred by MRE 404(b)
D-16	Deposit Guaranty National Bank, check no. 1044 Objection: irrelevant, no foundation, prejudicial, barred by MRE 404(b)
D-17	Deposit Guaranty National Bank, check no. 1053 Objection: irrelevant, no foundation, prejudicial, barred by MRE 404(b)
D-18	Deposit Guaranty National Bank, check no. 1056 Objection: irrelevant, no foundation, prejudicial, barred by MRE 404(b)

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D-19	United Parcel Service signature form Objection: irrelevant, no foundation, cumulative
D-20	Certified Copy of Sentencing Report re: theft by deception conviction Objection: irrelevant, no foundation, prejudicial, barred by MRE 404(b), no probative value to any claim or defense in this civil case
D-21	Certified Copy of Guilty Plea Colloquy re: theft by deception conviction Objection: irrelevant, no foundation, prejudicial, barred by MRE 404(b), no probative value to any claim or defense in this civil case
D-22	Certified Copy of Judgment for Declaration of Invalidity of Marriage Objection: irrelevant, no foundation, prejudicial, no probative value to any claim or defense in this civil case

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity and/or admissions of any of the preceding exhibits are objected to, the exhibit must be identified below along with a statement of specific grounds for said objections.

11. Any charts, graphs, diagrams, models or similar objects intended to be used in opening statements or closing arguments but which will not be offered in evidence are listed below:

**Plaintiff's Demonstrative Exhibits:**

The Plaintiff may use any enlargement of any exhibits, charts, diagrams or a timeline chronology of events. Any such objects will be produced in advance of trial.

**Defendant's Demonstrative Exhibits:**

The State may use any enlargement of any exhibits, charts, diagrams or a timeline chronology of events. Any such objects will be produced in advance of trial.

Any objections thereto are as follows:

If any objects are to be used by any party, such objects must be submitted to opposing counsel at least three (3) days before trial. If there is any objection to the use of said object the objection must be submitted to the Court at least one (1) day prior to trial.

12. The following is a list of witnesses **Plaintiff** anticipates calling at trial (except witnesses to be used solely for rebuttal or impeachment). The listing of a **WILL CALL** witness is a representation upon which opposing counsel may rely that the witness will be present at trial absent reasonable written notice to the contrary to counsel.

Name	Will Call	May Call	By Deposition	Fact, Liability, Expert, Damages	Address, Telephone Number
Patrick Higgins	X			Fact, Liability, Damages	Plaintiff herein; may only be contacted through counsel.
James E. Sturgis, Jr.		X		Fact	1501 Marcus St. Vicksburg, MS 601.638.5122

Will testify by Deposition:

James E. Sturgis, Jr. - Entire Trial Transcript

State whether the entire deposition or only designated portions will be used. Counsel shall confer at least ten (10) days before trial to resolve all controversies regarding all depositions, videotaped or otherwise. All disputes not resolved shall be submitted to the trial judge prior to the Pre-Trial Conference. Any objections not submitted within that time are waived.

13. The following is a list of witnesses **Defendant** anticipates calling at trial (except witnesses to be used solely for rebuttal or impeachment). The listing of a **WILL CALL** witness is a representation upon which opposing counsel may rely that the witness will be present at trial absent reasonable written notice to the contrary to counsel.

Name	Will Call	May Call	By Deposition/ Trial Transcript	Fact, Liability, Expert, Damages	Address, Telephone Number
Joan Hart	✓		✓	Fact	2700 Cove Cay Dr. Apt. 2G Clearwater, FL 33760 727.519.7207
Lynn Higgins		✓	✓	Fact	371 Wilmington Dr. Bartlett, IL 60103



					630.357.4847
Andrea (Hunter) Kitchens	✓			Fact	1107 Choctaw Trail Vicksburg, MS 601.639.0909
Homer "Wayne" Lewis		✓		Fact	1026 Hwy 61 N Vicksburg, MS 39180 601.634.0812
Kevin Massey		✓		Fact	United Parcel Service (UPS) 506 S. President Street Jackson, Mississippi 39201 601.968.3654
Sheriff Martin Pace		✓		Fact	1000 Grove St. Vicksburg, MS 601.636.1761
James E. Stirgus, Jr.	✓			Fact	1501 Marcus St. Vicksburg, MS 601.638.5122

**Will testify by Deposition/Trial Transcript:**

- Joan Hart – entire trial transcript

Plaintiff renews all objections made at trial based upon lack of personal knowledge, relevancy, prejudice, and improper MRE 404 evidence

- Lynn Higgins – entire trial deposition transcript

The Plaintiff has previously objected to the very taking of the deposition of his ex-wife on statutory and MRE grounds of spousal privilege and incompetency. Those objections were renewed at the beginning of the deposition. Further, the Plaintiff has filed a Motion in Limine to exclude the entirety of the testimony. Further, the testimony is laden with hearsay, prejudicial comments, irrelevant material, and a lack of personal knowledge. To the extent the testimony is sought to be introduced simply to verify Mr. Higgins' signature, it is cumulative.

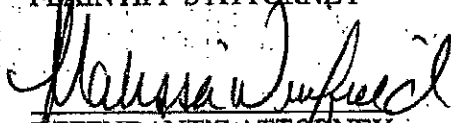
State whether the entire deposition or only designated portions will be used. Counsel shall confer at least ten (10) days before trial to resolve all controversies

regarding all depositions, videotaped or otherwise. All disputes not resolved shall be submitted to the trial judge prior to the Pre-Trial Conference. Any objections not submitted within that time are waived.

14. Discovery has been completed, except as to the following: N/A
15. This Pre-Trial Order will control the course of the trial unless this order be hereafter modified by written consent of the parties and the Court or by the Court for good cause shown to prevent manifest injustice.
16. All Jury Instructions shall be served and filed not less than three (3) days before trial. --N/A
17. All motions in limine must be filed and noticed to be heard at the Pre-Trial Conference scheduled for December 12, 2013, at 10 a.m., at the Warren County Courthouse.

ENTERED, this the 12 day of December, 2013.

  
PLAINTIFF'S ATTORNEY

  
DEFENDANT'S ATTORNEY

  
CIRCUIT COURT JUDGE

**TAB 5**

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL DISTRICT  
WARREN COUNTY, MISSISSIPPI

PATRICK HIGGINS

V.

CIVIL NO. 12,0030CI

STATE OF MISSISSIPPI

DEFENDANT

OPININON AND ORDER

PROCEDURAL HISTORY

The instant case is before this Court on Plaintiff Patrick Higgins's claim for compensation under Miss. Code Ann. §11-44-1, *et seq.*, for allegedly being wrongfully convicted and imprisoned by the Defendant, State of Mississippi. Higgins denies committing the felonies of writing bad checks that the State charged him with and convicted him of in the underlying criminal case. Mississippi Code Annotated § 11-47-7 (Supp. 2013) requires Higgins to prove by a preponderance of the evidence that he did not commit the felonies for which the State imprisoned him.

Following the December 5th, 1994 trial, a jury found Higgins guilty on three counts of writing bad checks. Subsequently, on December 16, 1994, he was sentenced to three consecutive years on each count and fined \$3,000.00. On March 10, 1998, the Mississippi Court of Appeal's reversed and rendered his conviction due to insufficiency of evidence. The Court of Appeals denied the State's Motion for Rehearing, and the Mississippi Supreme Court denied the State's Petition for Writ of Certiorari. The Court of Appeals issued its mandate on August 13, 1998. In its decision reversing Higgins' conviction, the Court of Appeals held that "the State failed in its

burden of proof to prove beyond a reasonable doubt that Patrick Higgins was in fact the person who signed [and delivered] the checks."

To date, neither a judge nor jury has ever found Higgins "not guilty" of the crime. The mandate only found that there was insufficient evidence for a jury to find him guilty and provided that the State release him. Simply stated, Higgins has never been adjudicated "not guilty."

#### STATEMENT OF FACTS

The following facts were established via pleadings, admissions, the Pre-Trial Order and at trial.

1. Higgins was president of Delta Glass Repair, Inc., a locksmith and glass repair business. He handled 95% of the business activities; "[he] was the boss" and "the buck stop[ped] with [him]."
2. On or about September 16, 1992, Patrick Higgins opened a business account for Delta Glass Repair with First National Bank of Vicksburg bearing account number 126-707-2.
3. Higgins resided at 106 Linda Drive in Vicksburg, Mississippi.
4. The post office box for Delta Glass Repair was Post Office Box 820651, Vicksburg, Mississippi 39182.
5. In August of 1993, Higgins placed a telephone order for locksmith supplies with Southern Lock and Supply ("Southern Lock"), a locksmith supplies wholesale company based out of Pinellas Park, Florida. Joan Hart, Southern Lock's credit manager, assisted Higgins with his telephone order.

6. In response to Higgins's telephone order, Hart sent the merchandise by United Parcel Service (UPS), cash-on-delivery, to 106 Linda Drive in Vicksburg, Mississippi where Higgins resided. UPS made three separate deliveries to Higgins's house. In turn, Higgins, signed and tendered to the UPS driver three checks totaling \$3,074.06.
7. Checks from the business account of Delta Glass Repair bearing check numbers 15154, 15155 and 15156 were received by Southern Lock as payment for the merchandise at issue.
8. When Higgins signed the subject checks he claims he had no knowledge whether his business checking account had sufficient funds to cover the amount of the checks because he was "too busy" to balance the check book.
9. The three checks at issue in this case were written on August 20, 26, and 27 of 1993.
10. The first check was written for the sum of \$434.01; the second for \$1,326.21; and the third for \$1,313.84. The total of the three checks is \$3,074.06.
11. The business account for Delta Glass Repair was closed by First National Bank on August 27, 1993.
12. Higgins testified that Delta Glass Repair received payments totaling approximately \$10,000.00 the week of August 16, 1993, and another \$10,000.00 the week of August 23, 1993. However, he had no knowledge of whether the payments were deposited into the bank account, or what happened to the funds.
13. UPS sent the subject checks to Hart at Southern Lock. On August 27, 1993, the checks were dishonored and marked "account closed."

14. Higgins learned that the account was closed at the earliest on August 29, 1993, and, in response, he took no measures to honor the checks.
15. According to James Stirgus, Jr., security officer at First National Bank of Vicksburg, the bank closed the business account for Delta Glass Repair because it was in overdraft by \$1,564.58.
16. Southern Lock never received payment to cover the cost of the merchandise which was tendered in exchange for the 3 checks.
17. In September 1993, following receipt of the dishonored checks, Hart telephoned Higgins regarding the dishonored checks. Hart also telephoned the District Attorney's worthless check unit and spoke with victim assistance coordinator, Andrea Hunter.<sup>1</sup>
18. In light of Higgins's unresponsiveness, Hunter instructed Hart to provide Higgins with a 15-day legal notice, pursuant to Miss. Code Ann. § 97-19-57, which required him to pay the full amount of the dishonored checks within 15-days from receipt of the notice.
19. On September 22, 1993, consistent with Hunter's instructions, Hart sent via certified mail in one envelope a 15-day legal notice for each dishonored check to Delta Glass Repair's post office box. Hart sent copies of the legal notices to Hunter.
20. Hunter received her copies of the notices; however, Higgins does not remember whether or not he received the notices. He admits the physical and post office box addresses on the notices were correct. Moreover, the certified mail receipt (a/k/a

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<sup>1</sup>Andrea Hunter has since re-married and is now known as Andrea Kitchens. However, to avoid confusion, and consistent with the references in the transcript of the underlying criminal trial, "Hunter" will be used here.

the "green card"), dated September 23, 1993, had the correct post office box address for Delta Glass Repair and the green card was signed.<sup>2</sup>

21. Higgins only gave keys to his post office box to people he trusted; therefore, he had no reason to believe that someone would sign to receive the envelope and not give it to him.

22. Hart followed up on the notices by speaking with Higgins over the telephone about the matter. Plaintiff sent her a \$900 cashier's check, which was only sufficient to cover two other previously dishonored checks, and not the subject checks. After applying the \$900 to the other checks, \$16.82 remained.

23. By letter, dated November 12, 1993, Hart refunded the \$16.82 to Higgins, rather than apply it as partial payment on the subject checks. Hart understood that if the company accepted partial payment, the District Attorney's office could not prosecute the matter. At no time did Hunter ever inform Hart that Southern Lock could not accept partial payment from Higgins.

24. Higgins offered to Hart to exchange some, but not all, of the merchandise for value. Hart did not accept this offer because she did not know the condition of this merchandise or whether the merchandise was the same as what was sent to Delta Glass Repair.

25. In February 1994, Hunter initiated talks with Higgins both personally, as well as by telephone, about honoring the checks. None of the three checks at issue here were ever honored by Higgins, despite several attempts by Hart and Hunter to work with Higgins to honor the checks. Consequently, in April 27, 1994, eight months after

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<sup>2</sup>It is unknown who signed the green card because the signature is merely a scrawl and illegible.



Higgins gained knowledge that the checks were dishonored; Hunter issued a warrant for Higgins's arrest.

26. A jury found Higgins guilty of three counts of issuing and delivering the three dishonored checks in violation of Miss. Code Ann. § 97-19-55. Mr. Higgins was convicted on December 5, 1994.

27. On December 16, 1994, Mr. Higgins was given a three (3) year sentence for each count to serve concurrently.

28. Mr. Higgins' conviction was reversed and rendered by the Mississippi Court of Appeals on March 10, 1998, due to insufficiency of evidence.

29. The Court of Appeals' Mandate was issued on August 13, 1998.<sup>3</sup>

30. Mr. Higgins was released from prison after the issuance of the Mandate.

31. Following the conviction at issue, Higgins was continually incarcerated for 44 months and 2 weeks.

32. Under the terms of the Wrongful Compensation Statute, Miss. Code Ann. § 11-44-7(2)(a), if Patrick Higgins were able to prove that he did not commit the felonies he would be entitled to \$185,256.41 in compensation for his wrongful conviction.

#### CONCLUSIONS OF LAW

This Court has previously rejected Higgins's argument that the reversal and rendering of his conviction is a finding of innocence. Thus, this case hinges on Higgins's sole, self-serving, testimony that he did not commit the crime. However, Higgins cannot withstand attacks on his character for truthfulness.

<sup>3</sup> The PTO originally stated that this was in 1994, but at trial the parties agreed that it was actually 1998, and the certified mandate showed the date was 1998.

In 2011, Higgins pled guilty to "Theft by Deception" related to him fraudulently obtaining approximately \$19,000.00 disability, workers' compensation and unemployment benefits.<sup>4</sup> In the instant matter, he stands to gain six figures.

Moreover, during the criminal trial, Higgins pointed the finger at his wife, knowing the State could not call her to testify, claiming she signed the checks in order to procure a divorce.

In its decision reversing the conviction of Higgins, the Court of Appeals expressed concern about none of the prosecution witnesses being able to say they saw Higgins sign the checks in question. In addition, the appeals court noted that in order to invoke the *prima facie* evidence of the identity of the person issuing the check pursuant to Mississippi Code § 97-19-62(1) (Rev. 1994), the person receiving the check must request the presenter's name, address, home phone number, etc.

In this civil trial for damages, however, the question of the identity of the person who signed and delivered the checks is no longer an issue. In an about-face at the civil trial, Higgins admitted he signed the checks, but claimed he did not know he had insufficient funds because he was too busy to balance the check book. In short, Higgins's testimony, standing alone, and without corroborating testimony, is simply not credible.

Higgins's claim is under the Mississippi Compensation Wrongful Conviction and Imprisonment Statute, Miss. Code Ann. § 11-43-1, *et. seq.* The Legislative findings and intent of the statute are as follows:

The Legislature finds that innocent persons who have been wrongly convicted of felony crimes and subsequently imprisoned have been uniquely victimized, have distinct problems reentering society, and should be compensated. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the provisions of this chapter that

<sup>4</sup>This evidence was admitted at trial pursuant to Miss. R. Evid. 609(a)(2) as such a conviction is peculiarly probative of credibility.

innocent people who are wrongfully convicted be able to receive monetary compensation.

*Id.* at § 11-44-1 (emphasis added). Specifically, at issue here is Section 11-44-7(b), which states that a claimant must prove by a preponderance of the evidence that "[h]e did not commit the felony or felonies for which he was sentenced and which are the grounds for the complaint. . . ."

The Mississippi Supreme Court has defined preponderance of the evidence as "evidence more convincing to the [trier of fact] as worth of belief than that in opposition thereto, or such evidence as, when weighed with that opposed to it, has more convincing force." *Gregory v. Williams*, 35 So. 2d 451, 453 (Miss. 1948). This burden simply requires the greater or more convincing evidence. See *Rucker v. Hopkins*, 499 So. 2d 766, 769 (Miss. 1986) (quoting *McCain v. Wade*, 180 So. 748, 749 (1938)) (Noting that the plaintiff must prove his case by a preponderance of the evidence with "fair or reasonable certainty or definiteness," "[i]t is not enough that this shall be left to conjecture or to inferences so loose as that it cannot be dependably told where conjecture ceases and cogent inferences begin").

Even with a lower burden of proof than in a criminal trial, proving one's innocence by a preponderance of the evidence is far more challenging than establishing reasonable doubt as to one's guilt. Here, Higgins must prove his innocence. This is in stark contrast to the traditional principle of criminal law that a person is innocent until proven guilty.

In support of his innocence, Higgins offers the Court nothing more than his testimony, without any corroborating evidence. The trier of fact determines the credibility of a witness, and the weight of his testimony based on the following guiding principles:

It is the function of the [factfinder] to pass upon the credibility of the evidence. . . [T]he strength or weakness of testimony is not measured by the number of witnesses. [T]he [factfinder] may accept the testimony of some witnesses and reject that of others, and may accept in part and reject in part the testimony of any witnesses, or may believe part of the evidence on behalf of the state and part of that for the accused, and the credibility of such witnesses is not for the reviewing court, but only for the [factfinder].

*Bond v. State*, 162 So. 2d 510, 512 (Miss. 1964). When the trial judge sits as the fact finder, he has the sole authority for determining the credibility of witnesses. *Bell v. Parker*, 563 So. 2d 594, 597 (Miss. 1990). In evaluating a witness' credibility:

You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, state of mind, demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider the extent to which it is contradicted by other evidence in the case. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood. After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

See Miss. Model Jury Instructions Civil, §§ 1:35; 1:36; and, 1:37. Specifically, this Court instructs as follows:

As sole judges of the facts in this case, your exclusive province is to determine what weigh and what credibility will be assigned the testimony supporting evidence of each witness in this case. You are required to use your good common sense and sound honest judgment in considering and weighing the testimony of each witness who has testified in this case. The evidence which you are to consider consists of the testimony and statements of the witnesses and the exhibits offered and received. You are also permitted to draw such reasonable inferences from the evidence as seem justified in light of your experience.

With these considerations in mind, this Court must weigh the testimony of Higgins, who has six figures to gain from denying that he wrote bad checks against the testimony of Hart, Hunter and Sturgis - all of whom have nothing to gain from testifying at the civil trial 20 years after the underlying criminal charge.

Higgins claims that he did not have "fraudulent intent" as required under Miss. Code Ann. § 97-19-55 because he did not know the business account had insufficient funds when he tendered the subject checks to Southern Lock.<sup>5</sup> However, the testimony at trial does not support his claim. Higgins testified that he did not know whether or not there were insufficient funds in the account at the time he wrote more than \$3,000.00 in checks to Southern Lock because he was "too busy" to balance the check book.

Higgins testified that Delta Glass Repair received \$20,000.00 in payments during the two weeks prior to him signing the subject checks. Yet, even accepting this uncorroborated testimony as true, there is no evidence that any of these payments were ever deposited into the business checking account and, if so, why the account was overdrawn by \$1,564.58 just six days after receiving the \$20,000.00 in payments. In fact, Higgins testified that he could not remember what he did with the \$20,000.00.

Even if Higgins did not have the requisite fraudulent intent at the time he signed the subject checks, he must overcome the presumption under Miss. Code Ann. § 97-19-57(1). This he cannot do. In 1993, Section 97-19-57(1) read, as follows:

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<sup>5</sup>At the time of Higgins's conviction, Section 97-19-55 read as follows:

(1) It shall be unlawful for any person with fraudulent intent to make, draw, issue, utter or deliver any check, draft or order to obtain money drawn on any bank, corporation, firm or person for the purpose of obtaining money, services or any article of value, or for the purpose of satisfying a preexisting debt or making a payment or payments on a past due account or accounts, knowing at the time of making, drawing, issuing, uttering or delivering said check, draft or order that the maker or drawer has not sufficient funds in or on deposit with such bank, corporation, firm or person for the payment of such check, draft or order in full, and all other checks, drafts or orders upon such funds then outstanding. . . .

(1) As against the maker or drawer thereof, the making, drawing, issuing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence and create a presumption of intent to defraud and of knowledge of insufficient funds in, or on deposit with, such bank, corporation, firm or person, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with a service charge not to exceed Thirty Dollars (\$30.00), within fifteen (15) days after receiving notice that such check, draft or order has not been paid by the drawee. (Emphasis added).

The evidence establishes that three 15-day notices, one for each check, were sent by certified mail in a single envelope to Higgins, with a copy to Hunter; the envelope was sent to the correct post office box; the green card for the envelope containing the notices was signed; and, only trusted friends and his wife had access to the business's post office box. Hunter received her copies of the notices. Higgins did not recall whether or not he received his copies. He testified that he had no reason to believe that he would not have received the envelope containing the notices from any of his trusted friends and wife had they retrieved it from the post office box. After drawing all reasonable inferences, and weighing the credibility of the witnesses, the Court finds that Higgins received the 15-day notices and did not timely act on them. Accordingly, Higgins's failure to pay the dishonored checks after receipt of notices is *prima facie* evidence of intent to defraud, thereby creating a presumption of intent to defraud that Higgins failed to overcome.

Higgins's reliance on *Durham v. State*, 74 So. 3d 908 (Miss. Ct. App. 2011) is unavailing. Simply stated, *Durham* is irrelevant and inapplicable here. The *Durham* case addresses a lower court's failure to properly instruct the jury on the presumption under Section 97-19-57(1). Because the Court is the fact finder, and not a jury unfamiliar with the legal term "*prima facie*", there can be no confusion as to the interplay between Sections 97-19-55 and 97-19-57(1). In addition, even without the presumption of the statute, this Court is of the opinion that Higgins intended to defraud Southern Lock not only when he failed to comply with the 15-day notices,

but also when he failed to pay for the goods after he was aware that the checks were dishonored and after he knew checks he'd previously issued had been dishonored, and because he has no idea what happened to the \$20,000.00 in fees his business had received the two (2) weeks prior thereto.

#### CONCLUSION

Based on the above findings of fact and conclusions of law, Higgins has not been able to meet the burden of proof that Miss. Code Ann. §11-44-7 requires of him to establish by a preponderance of the evidence that he did not commit the felony for which he was charged and incarcerated and, therefore, judgment must be entered in favor of the Defendant.

SO ORDERED this the 24 day of January, 2014.

  
M. JAMES CHANEY, JR.  
CIRCUIT JUDGE

# TAB 6



WELLS GLASS REPAIR, INC. 0992  
PO BOX 820651  
VICKSBURG, MS 39180

259593

15154

P R 13559 62903703

85-1/653

Aug 20 19 93

Pay to the  
Order of Southern Lock

\$ 434.01

Four Hundred Thirty Four Dollars And 01/100 Dollars

FIRST NATIONAL BANK  
of Vicksburg  
P.O. Box 39, Ph: 636-3151  
Vicksburg, MS 39181-0039 Member FDIC

ACCOUNT CLOSED

For 754566, 754566, 754566

00653000176 26 20 20 5154 00000043401

STATE EXHIBIT NO. 3

WILLIAMS ONE, JORDAN

FOR DEPOSIT ONLY  
SOUTHERN LOCK  
AND SUPPLY CO.

DO NOT SIGN BELOW THIS LINE  
FOR DEPOSIT ONLY

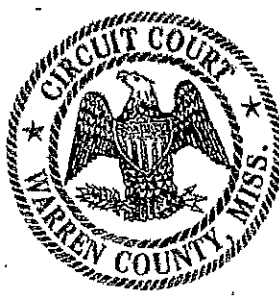
PAY TO THE ORDER OF  
SOUTHERN LOCK  
AND SUPPLY CO.

USE HERE:

FEDERAL RESERVE BANK REGULATOR CO

REURNS

00653000176 26 20 20 5154 00000043401



CERTIFIED AND ATTESTED A TRUE COPY

This 13 DAY OF Aug 2013  
SHELLY ASHLEY-PALMERTREE, CIRCUIT CLERK

BY [Signature] D.C.

PLAINTIFF'S  
EXHIBIT 1  
200001213

R.E.000041

**TAB 7**



**TAB 8**

DELTA GLASS REPAIR, INC. 0992  
PO BOX 820651  
VICKSBURG, MS 39180

259593

15156

85-1/653

8/27 19 93

Pay to the  
Order of SOUTHERN LOCK

\$ 1313.84

ONE THOUSAND THIRTEEN DOLLARS AND 84/100 CENTS

FIRST NATIONAL BANK  
of Vicksburg

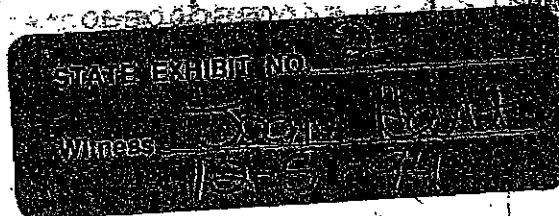
P.O. Box 39, Ph: 636-4151  
Vicksburg, MS 39181-0039 Member FDIC

ACCOUNT CLOSED

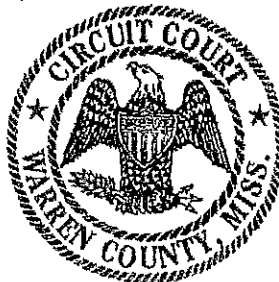
For 755516

⑆065300017⑆ 126 707 2⑆ 5156 ⑈0000111384⑈

\*FEDERAL RESERVE BANK REGULATION CC



ENDORSE HERE:  
PAY TO THE ORDER OF  
FOR DEPOSIT ONLY  
SOUTHERN LOCK  
AND SURETY COMPANY  
DO NOT SIGN BELOW THIS LINE  
FOR DEPOSIT ONLY



CERTIFIED AND ATTESTED A TRUE COPY

This 13 DAY OF Aug 2013  
SHELLY ASHLEY-PALMER, CIRCUIT CLERK

BY [Signature] D.C.



R.E.000043

# TAB 9

TO: DELTA GLASS REPAIR INC.  
106 LINDA DR.  
VICKSBURG, MS 39180

DATE 9/22/93

15 DAY LEGAL NOTICE LETTER

This Statutory Notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972.

You are hereby notified that a check, draft or order numbered 15154 apparently issued by you on AUGUST 20, 93 (date), drawn upon FIRST NATIONAL BANK OF VICKSBURG (name of bank), and payable to SOUTHERN LOCK & SUPPLY COMPANY (Payee) has been dishonored.

Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order; plus a service charge of Thirty Dollars (\$30.00), the total amount due being \$ 464.01.

Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument and all other available information relating to this incident to the proper authorities for criminal prosecution.

MERCHANT: SOUTHERN LOCK & SUPPLY CO.

ADDRESS: P.O. BOX 1980

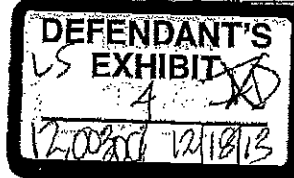
PINELLAS PARK, FL. 34664-1980

TELEPHONE: (813) 541-5536

BY:

CAWPS11WPSADCHECK.LET  
February 11, 1993

STATE



R.E.000044

**TAB 10**



TO:

DATE 9/22/93

DELTA GLASS REPAIR INC.

106 LINDA DR.

PO. BOX 820651  
VICKSBURG, MS. 39180

15 DAY LEGAL NOTICE LETTER

This Statutory Notice is provided pursuant to Section 97-  
19-57, Mississippi Code of 1972.

You are hereby notified that a check, draft or order numbered  
15155 apparently issued by you on AUGUST 26, 93 (date),  
drawn upon FIRST NATIONAL BANK OF VICKSBURG (name of bank),  
and payable to SOUTHERN LOCK & SUPPLY COMPANY  
\_\_\_\_\_(Payee) has been dishonored.

Pursuant to Mississippi law, you have fifteen (15) days from  
receipt of this notice to tender payment of the full amount of such  
check, draft or order, plus a service charge of Thirty Dollars  
(\$30.00), the total amount due being \$1356.21.

Unless this amount is paid in full within the time specified  
above, the holder may assume that you delivered the instrument with  
intent to defraud and may turn over the dishonored instrument and  
all other available information relating to this incident to the  
proper authorities for criminal prosecution.

MERCHANT: SOUTHERN LOCK & SUPPLY COMP

ADDRESS: P.O. BOX 1980

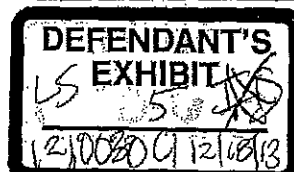
PINELLAS PK., FL. 34664-1980

TELEPHONE: (813) 541 - 5536

BY: \_\_\_\_\_

CAWPS1\WFBADCHECK.LET  
February 11, 1993

STATE



R.E.000045

**TAB 11**

TO: DELTA GLASS REPAIR INC.  
106 LINDA DR.  
VICKSBURG, MS. 39180  
P.O. BOX 820651

DATE 9/22/93

15 DAY LEGAL NOTICE LETTER

This Statutory Notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972.

You are hereby notified that a check, draft or order numbered 15156 apparently issued by you on 8/27/93 (date), drawn upon FIRST NATIONAL BANK OF VICKSBURG (name of bank), and payable to SOUTHERN LOCK & SUPPLY CO.

(Payee) has been dishonored.

Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, plus a service charge of Thirty Dollars (\$30.00), the total amount due being \$1343.84.

Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument and all other available information relating to this incident to the proper authorities for criminal prosecution.

MERCHANT: SOUTHERN LOCK & SUPPLY CO.

ADDRESS: P.O. BOX 1980

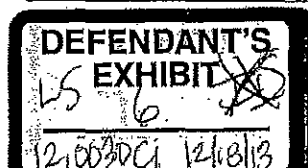
PINELLAS PK., FL. 34664-1980

TELEPHONE: 813-541-5536

BY: \_\_\_\_\_

C:\WP51\WPB\ADCHECK.LET  
February 11, 1993

STATE



R.E.000046

**TAB 12**

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
VS. : CHESTER COUNTY, PENNSYLVANIA  
: CRIMINAL ACTION  
: NO. CR-4626-2010  
: CR-1548-2011  
Patrick J. Higgins : OTN.

GUILTY PLEA COLLOQUY

The defendant agrees to enter a plea of guilty to the following crimes:

CRIME: Theft by Deception

Info. # 4626-10 Count # 1 Statute: 18 Pa CSA 3922(a)(1)

Maximum Sentence: 7 yrs. Grading: F3 Maximum Fine: \$15000

Elements: Intentionally obtains or withholds property of another by deception by intentionally creating or reinforcing a false impression as to law, value, intention or other state of mind.

Definitions of Terms: \_\_\_\_\_

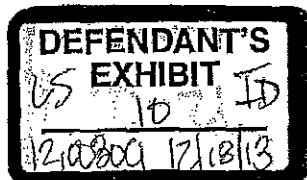
CRIME: Theft by Deception

Info. # 1548-11 Count # 1 Statute: 18 Pa CSA 3922(a)(1)

Maximum Sentence: 7 yrs. Grading: F3 Maximum Fine: 15000

Elements: Intentionally obtains or withholds property of another by deception by intentionally creating or reinforcing a false impression as to law, value, intention or other state of mind.

Definitions of Terms: \_\_\_\_\_



Patrick J. Higgins  
Defendant

ADDITIONAL CRIMES TO WHICH THE DEFENDANT AGREES TO PLEAD GUILTY:

CRIME:

Info. # \_\_\_\_\_ Count # \_\_\_\_\_ Statute: \_\_\_\_\_

Maximum Sentence: \_\_\_\_\_ Grading: \_\_\_\_\_ Maximum Fine: \_\_\_\_\_

Elements: \_\_\_\_\_

Definitions of Terms: \_\_\_\_\_

CRIME:

Info. # \_\_\_\_\_ Count # \_\_\_\_\_ Statute: \_\_\_\_\_

Maximum Sentence: \_\_\_\_\_ Grading: \_\_\_\_\_ Maximum Fine: \_\_\_\_\_

Elements: \_\_\_\_\_

Definitions of Terms: \_\_\_\_\_

In support of this plea, the defendant admits that the following facts did occur:

*Between the dates of June 6, 2009 to Aug. 1, 2009, I was employed by Burger King and between the dates of June 2009 and May 2010 he fraudulently received 18964.50 that he was not entitled to receive in disability benefits. From 1/2009 to 6/2009, I received unemployment benefits while also receiving workers comp benefits. From 6/6/2009 to 10/6/2009 I worked full time and also #.*

ALL COUNTS NOT DISPOSED OF ABOVE (NOR DISPOSED OF PURSUANT TO PLEA BARGAIN, IF ANY, ATTACHED HERETO), INCLUDING SUMMARY OFFENSES AT THE ABOVE INFORMATION NUMBER(S), ARE WITHDRAWN; AND ANY OUTSTANDING BENCH WARRANTS ARE QUASHED. *\*collected both unemployment and workers comp at that same time, total of \$13,120.*

*Pat Higgins*  
Defendant

CHECK ONE:

\_\_\_\_\_ This is an OPEN PLEA OF GUILTY to the crime(s) set forth on the previous page(s). There is no plea bargain or other agreement relating to the plea to those crimes except as stated below.

✓ \_\_\_\_\_ This plea is part of a PLEA AGREEMENT. If the Court accepts this PLEA AGREEMENT the defendant understands that his sentence(s) will be set forth below. If the Court does not accept this bargain, then the plea of guilty will be deemed withdrawn.

Unless specifically ordered by the Court otherwise, where the maximum sentence imposed pursuant to this plea on any one charge or added consecutive sentences equal 24 or more months then the defendant is sentenced to a state sentence at a state correctional institution (SCI).

TBD

SENTENCE:

Information No.: 4624-10 Count No.: 1 Charge: \_\_\_\_\_

Imprisonment: 4-23 months Probation: \_\_\_\_\_  
CREDIT: 11-18-2010 to 2-14-2011 AND 4-6-2011 to 5-6-2011 (120 days total)  
Check here if this is a mandatory sentence.

Costs, plus \$ \_\_\_\_\_ fine; \$ \_\_\_\_\_ to the use of Chester County

Concurrent with/consecutive to: \_\_\_\_\_

Other Conditions: \_\_\_\_\_

Restitution: \$ 18,964.50 payable to Hartford Insurance Group

Mark A. Bellavia

Assistant District Attorney

MARK A. BELLAVIA

Date: 5/6/2011

Paul Higgins

Defendant

W. Bellavia

Attorney for Defendant

(SIGN ON PAGE 4 IF THERE ARE ADDITIONAL DISPOSITIONS)

ADDITIONAL DISPOSITIONS:

SENTENCE:

Information No.: 1548-11 Count No.: 1 Charge: TBD

Imprisonment: 4-23 months Probation: \_\_\_\_\_

\_\_\_\_\_ Check here if this is a mandatory sentence.

Costs, plus \$ \_\_\_\_\_ fine; \$ \_\_\_\_\_ to the use of Chester County.

Concurrent with/consecutive to: count 2 of 4624-10

Other Conditions: \_\_\_\_\_

Restitution: \$ 13,120, payable to Commonwealth of PA

Information No.: \_\_\_\_\_ Count No.: \_\_\_\_\_ Charge: \_\_\_\_\_

Imprisonment: \_\_\_\_\_ Probation: \_\_\_\_\_

\_\_\_\_\_ Check here if this is a mandatory sentence.

Costs, plus \$ \_\_\_\_\_ fine; \$ \_\_\_\_\_ to the use of Chester County

Concurrent with/consecutive to: \_\_\_\_\_

Other Conditions: \_\_\_\_\_

Restitution: \$ \_\_\_\_\_, payable to \_\_\_\_\_

Information No.: \_\_\_\_\_ Count No.: \_\_\_\_\_ Charge: \_\_\_\_\_

Imprisonment: \_\_\_\_\_ Probation: \_\_\_\_\_

\_\_\_\_\_ Check here if this is a mandatory sentence.

Costs, plus \$ \_\_\_\_\_ fine; \$ \_\_\_\_\_ to the use of Chester County

Concurrent with/consecutive to: \_\_\_\_\_

Other Conditions: \_\_\_\_\_

Restitution: \$ \_\_\_\_\_, payable to \_\_\_\_\_

M. A. Bell  
Assistant District Attorney

Paul Hagg  
Defendant

Date: 5/6/2011

Willis  
Attorney for Defendant



COMPLETE ALL ITEMS

PUT YOUR INITIALS AFTER EACH ITEM YOU UNDERSTAND AND AGREE TO:

THE CHARGES:

1. I hereby enter a plea of guilty to the charges set forth on the cover pagers. ✓ PA
2. I have read and understand the cover pages. ✓ PA
3. My lawyer has explained to me the elements of the offenses to which I am pleading guilty. ✓ PA
4. I admit committing the crimes to which I am pleading guilty. ✓ PA
5. I acknowledge that the facts occurred as set forth on page 2 of this form. ✓ PA
6. My full name is: PATRICK JOSEPH HIGGINS
7. I am known by the following other names: X
8. I am 54 years of age today.
9. I went as far as 1st College grade in school.
10. I can read, write, and understand the English language. ✓ PA

MENTAL HISTORY:

11. Have you ever been a patient in a mental institution or have you ever been treated for mental illness?

(Yes or No) (No)

✓ PA  
(Initials)

12. if the answer to the previous question is "Yes", please explain the details:

X  
(Initials)

Patrick Higgins  
Defendant

13. Are you now being treated for a mental illness?

(Yes or No)  
✓ PA  
(Initials)

14. If the answer to the previous question is "Yes", please explain the details:

\_\_\_\_\_  
\_\_\_\_\_  
(Initials)

15. Do you understand the charges against you?

(Yes or No)  
✓ PA  
(Initials)

16. Are you able to work with your lawyer in responding to those charges?

(Yes or No)  
✓ PA  
(Initials)

VOLUNTARINESS OF PLEA:

I agree that:

17. No one has use any force or threats against me in order to get me to enter this plea of guilty.

✓ PA

18. No promises have been made to me in order to get me to enter this plea other than what is set forth in the plea bargain agreement, if any, on page 3 and 4 of this guilty plea form.

✓ PA

TRIAL RIGHTS:

I understand that:

19. I need not enter a plea of guilty, but may plead not guilty and go to trial.

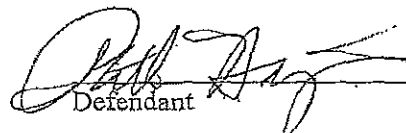
✓ PA

20. If I went to trial, I would have the right to file motions asking the Court for many different kinds of relief. Some of these would be motions to quash or dismiss the charges against me for lack of evidence or for procedural defects; to suppress the use of evidence against me because it was obtained unconstitutionally, as for instance by improper questioning or an illegal search and seizure; and to ask that evidence be suppressed because it was improperly obtained, such as identification testimony. There could be other motions, also. If I file such pre-trial applications, a Judge will have to rule on them before the case could go to trial. I am willing to give up these rights.

✓ PA

Patricia Higgins  
Defendant

21. I have the right to be tried in front of a jury of ordinal, citizens, consisting of 12 people selected randomly from the voter registration list of Chester County. ✓ PD
22. I may apply for a trial by a Judge without a jury, and that if a Judge approves that request, he would sit as the fact finder in place of a jury and decide whether or not I am guilty. ✓ PD
23. If I had a trial by jury, I would be allowed to participate, along with my attorney, in rejecting some of the people who were called to sit as jurors; I could challenge an unlimited number of jurors for cause if I could show that in some manner they had formed fixed opinions concerning my guilt or innocence; and I also would have a certain number of "peremptory challenges", by means of which I could reject jurors without having to give a reason. ✓ PD
24. The 12 jurors remaining would then have to agree unanimously on my guilt before I could be convicted. ✓ PD
25. In order to be convicted, I would have to be proven guilty beyond a "reasonable doubt". A reasonable doubt is a doubt which would cause a person of reasonable prudence to hesitate before acting in a matter of importance to him or herself. I am presumed innocent, and if the Commonwealth cannot prove me guilty beyond a reasonable doubt, I must be set free on these charges. ✓ PD
26. During the trial, my lawyer and I would have the right to confront and cross-examine the witnesses, against me, and to object to the evidence presented. I have the right to call witnesses on my own behalf and to testify, if I wish. If I choose not to testify or call witnesses, the jury would be instructed that they could not draw any conclusions from the fact that I did not testify. Also, either I or my attorney have the right to make a closing statement on my behalf to the jury. ✓ PD
27. If I choose to represent myself at trial, I would be allowed to do all of the things that a lawyer would otherwise do for me. ✓ PD
28. If I enter a plea in this matter, I give up my right to appeal to the Superior Court on the basis of any trial errors. My rights to appeal after a guilty plea are limited to 4 grounds only:
- a. that this Court did not have jurisdiction, as for instance, where the offense occurred in another county;
  - b. that the sentence imposed was illegal;
  - c. that I entered my plea either involuntarily or unknowingly; or
  - d. that my attorney was not competent in the matter in which he represented me.
- ✓ PD

  
Defendant

SENTENCING RIGHTS:

I am aware:

29. Of the maximum sentences and fines that can be imposed for the offense with which I am charged; they are set forth on the cover pages of this form.

✓ PA

30. In pronouncing sentence, the Court must consider, BUT IS NOT BOUND BY, the guidelines issued by the Pennsylvania Commission on Sentencing. I have seen the sentencing guidelines forms submitted by the Commonwealth, and understand what the guidelines call for in my case.

✓ PR

31. [FOR PLEA BARGAINS ONLY] The Court is not bound by the terms of the plea agreement that I have entered into with the Commonwealth on pages 3 and 4 of this form, but if the Court rejects it, I may withdraw my plea of guilty and enter a plea of not guilty.

✓ PR

32. [MANDATORY SENTENCES ONLY] The crime of \_\_\_\_\_  
to which I am entering a plea, carries with it a mandatory minimum sentence of \_\_\_\_\_, and a mandatory fine of \$ \_\_\_\_\_

~~\_\_\_\_\_~~

33. CHOOSE ONE:

- a. I am not presently on probation or parole.
- b. I am presently on probation or parole, and I understand that this guilty plea will result in a violation of that probation or parole, and that I may be separately sentenced for that violation of probation or parole.

✓ PR

~~\_\_\_\_\_~~

POST SENTENCE RIGHTS:

I understand that:

34. I have ten (10) days from the date I am sentenced within which to file optional motions with this Court for post-sentence relief, such as a motion to withdraw my guilty plea or a motion to modify sentence. I understand that these motions must be, in writing, and specify the reasons why relief is requested. I also understand that failure to file these optional-motions shall not be a waiver of any rights or issues I could raise on appeal.
35. If I need to be represented by a lawyer in filing such motions, and cannot afford a lawyer of my own, I may apply to the Court and the Court will appoint one to represent me free of charge.

✓ PR

✓ PR

Ruth Ayer  
Defendant

RIGHT TO APPEAL:

36. I understand that if I wish to appeal I must appeal any sentence pronounced upon me to Superior Court of Pennsylvania, within thirty (30) days of today's date, unless the Court vacates the sentence before that period of thirty (30), days expires, or unless I file an optional post-sentence motion. If any post-sentence motion is denied, I must appeal within thirty (30) days of that denial.

✓ PR

37. I have the right to the assistance of counsel in such an appeal, and if I can not afford an attorney of my own, I may apply to this Court and an attorney will be appointed to represent me free of charge.

✓ PR

38. If I can not afford the costs of an appeal, I may also apply to the Court and I may be permitted to proceed without payment of costs.

✓ PR

TO MY LAWYER:

38. I have had enough time to discuss these charges with my lawyer, and I am satisfied with the advice that he has given me, and with his representation of me before this Court.

✓ PR

40. I have gone over this document with my attorney, and he has explained it to me and answered any questions I have concerning it.

✓ PR

41. I further agree that, although I have been assisted by my attorney, it is my own decision to enter the plea that I making here today.

✓ PR

I AFFIRM THAT I HAVE READ THE ABOVE DOCUMENT IN ITS ENTIRETY AND I UNDERSTAND IT'S FULL MEANING, AND I AM STILL, NEVERTHELESS, WILLING TO ENTER A PLEA OF GUILTY TO THE OFFENSES SPECIFIED. I FURTHER AFFIRM THAT MY SIGNATURE AND INITIALS ON EACH PAGE OF THIS DOCUMENT ARE TRUE AND CORRECT.

Booth Higgins  
Defendant

As attorney for the above defendant, I have explained to (him)(her)(his)(her) rights with respect to the charges against (him)(her). I have also explained the rights set forth in this document. I certify that I am satisfied that the defendant understand (his) (her) rights and has voluntarily and knowingly chosen to enter a plea of (guilty) (nolo contendere).

[Signature]  
Attorney for Defendant

COURT ACTION

6  
6  
6  
6

The defendant is found to have understandingly completed to participated in the completion of the foregoing guilty plea form, and to have voluntarily and intelligently entered the plea of guilty to the charges described herein.

Defendant's guilty plea(s) is/are accepted.

The foregoing Plea agreement is approved.

Defendant is sentenced in accordance with the Plea Agreement.

Select one (1) of the following three (3) options:

- \_\_\_\_\_ Defendant is not eligible for work release.
- \_\_\_\_\_ Defendant is eligible for work release after \_\_\_\_\_
- \_\_\_\_\_ Defendant is eligible for work release at the discretion of the Warden.

Check if applicable:

\_\_\_\_\_ It is hereby Ordered that the Court's Policy requiring immediate payment of fines and costs be waived in this matter and the Defendant is to pay the Court imposed fines and costs within \_\_\_\_\_ months at a rate determined by the Probation Office.

BY THE COURT:

Date: 6 May 2011

Thomas Gavin J.

Certified From The Record  
This 26th Day of July 2013  
P. J. Gaudin  
Deputy Clerk of Common Pleas Court

**TAB 13**

AMENDED ☒ 5/09/11 Credit Dates  
per Colloquy

SENTENCING SHEET

(Revised 3/10)

(Page 1 of 1)

Dkt. No. 4626-10 OTN 7021503-6  
Defendant Patrick Joseph Higgins  
Alias(es) \_\_\_\_\_

Date 5/6/11  
Judge CAVIA  
DA Bellavia (PA Dept of Atty Gen)  
Defense Ben  
Reporter F.B./20  
Clerk CAIN

CC: 2-Sheriff  
1-APO  
1-BAIL  
CCP(fax) \_\_\_\_\_  
Other: \_\_\_\_\_

P/A ☒ O/G \_\_\_\_\_ Nolo \_\_\_\_\_ Alford Plea \_\_\_\_\_  
Sentencing \_\_\_\_\_ Re-Sentencing \_\_\_\_\_

COUNT: 1 CHARGE: Theft by Deception  
Committed: \_\_\_\_\_ yr 4 mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr 23 mo \_\_\_\_\_ days  
Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole  
FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP ☒ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_  
RESTITUTION: \$18,964.50 Payable to Hartford Ins Co.  
CONC w/ \_\_\_\_\_ CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

COUNT: \_\_\_\_\_ CHARGE: \_\_\_\_\_  
Committed: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days  
Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole  
FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP \_\_\_\_\_ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_  
RESTITUTION: \_\_\_\_\_  
CONC w/ \_\_\_\_\_ CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

COUNT: \_\_\_\_\_ CHARGE: \_\_\_\_\_  
Committed: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days  
Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole  
FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP \_\_\_\_\_ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_  
RESTITUTION: \_\_\_\_\_  
CONC w/ \_\_\_\_\_ CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

COUNT: \_\_\_\_\_ CHARGE: \_\_\_\_\_  
Committed: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days  
Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole  
FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP \_\_\_\_\_ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_  
RESTITUTION: \_\_\_\_\_  
CONC w/ \_\_\_\_\_ CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

☒ Other Counts are W/D - Costs on Defendant ☐ CRN Evaluation/Alcohol Highway Safety School

☐ Sentence to commence

☐ BAC

☒ Credit for time 11/18/10 to 2/14/11 and 4/6/11 to 5/6/11  
(120 days)

☐ License Surrendered ☐ Affidavit Surrendered

☒ Parole Order Signed

☐ FLAF \$ \_\_\_\_\_

☐ Eligible for Parole

☐ Drug/Alcohol Evaluation & recommended treatment

☐ Eligible for RRRI Program ☐ RRRI Ineligible

☐ Mental Health Evaluation & recommended treatment

☐ RRRI Ineligibility Waived by DA

☐ Mental Health Protocol

☐ Eligible for Re-entry Plan

☐ Mental Health Court

☐ Electronic Home Confinement (EHC) for \_\_\_\_\_

☐ Anger Management

☐ Active G.P.S. for \_\_\_\_\_ days/weeks/months/years

☐ Domestic Violence Program

☐ On-Demand G.P.S. for \_\_\_\_\_ days/weeks/months/years

☐ Sex Offender Program

☐ Passive G.P.S. for \_\_\_\_\_ days/weeks/months/years

☐ Work Release Eligible at Warden's discretion

☐ Intensive Supervision (Non-D/A Related)

☐ Sentence may be served at CCP at Warden's discretion

☐ Chronic Substance Abuse Program

☐ BOOT CAMP Eligible

☐ No contact w/ \_\_\_\_\_

☐ Non-Reporting during \_\_\_\_\_ if in compliance

☐ Other: \_\_\_\_\_

☐ Waiver of Supervision Fee

☐ Community Service \_\_\_\_\_ Hrs.

☒ Pay Within 19 months - Remainder of sentence

CERTIFIED FROM THE RECORD

This 6th day of May

2057000057

BY THE COURT:

DEFENDANT'S  
EXHIBIT ID

12.0030ci 12/18/13

Thomas G. Brown

Richard C. ...

#18,964.50  
#382.00  
Fine - \$382.00  
Cost - \$18,964.50



AMENDED ☒ 5/09/11 Credit Dates

SENTENCING SHEET

(Revised 3/10)

Dkt. No. 1548-11 OTN 7045054-2  
Defendant Patrick Joseph Higgins  
Alias(es) \_\_\_\_\_

Date 5/6/11  
Judge CAVIN  
DA Bellavia (PA Dept of Atty General)  
Defense Bey  
Reporter Finlan  
Clerk CAIN

CC:  
☒ 2-Sheriff  
☒ 1-APO  
☒ 1-BAIL  
CCP(fax) \_\_\_\_\_  
Other: \_\_\_\_\_

P/A ☒ O/G \_\_\_\_\_ Nolo \_\_\_\_\_ Alford Plea \_\_\_\_\_  
Sentencing \_\_\_\_\_ Re-Sentencing \_\_\_\_\_

COUNT: 1 CHARGE: Theft by Deception

Committed: \_\_\_\_\_ yr 4 mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr 23 mo \_\_\_\_\_ days

Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole

FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP ☒ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_

RESTITUTION: \$13,120 payable to Community/Thot PA

CONC w/ Sentence in c/r 4626-10

CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

COUNT: \_\_\_\_\_ CHARGE: \_\_\_\_\_

Committed: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days

Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole

FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP \_\_\_\_\_ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_

RESTITUTION: \_\_\_\_\_

CONC w/ \_\_\_\_\_ CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

COUNT: \_\_\_\_\_ CHARGE: \_\_\_\_\_

Committed: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days

Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole

FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP \_\_\_\_\_ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_

RESTITUTION: \_\_\_\_\_

CONC w/ \_\_\_\_\_ CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

COUNT: \_\_\_\_\_ CHARGE: \_\_\_\_\_

Committed: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days \_\_\_\_\_ hrs TO \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days

Probation: \_\_\_\_\_ yr \_\_\_\_\_ mo \_\_\_\_\_ days ☐ Consecutive to Parole

FINE: \_\_\_\_\_ & COSTS \_\_\_\_\_ SERVE AT CCP \_\_\_\_\_ SCI \_\_\_\_\_ ☐ RRRI Minimum: \_\_\_\_\_

RESTITUTION: \_\_\_\_\_

CONC w/ \_\_\_\_\_ CONS to \_\_\_\_\_

☐ Mandatory Sentence ☐ Megan's Law ☐ DNA Testing

☒ Other Counts are W/D - Costs on Defendant

☐ Sentence to commence

☒ Credit for time 11/18/10 to 2/14/11 and 4/6/11 to 5/6/11

☒ Parole Order Signed (120 days)

☐ Eligible for Parole

☐ Eligible for RRRI Program ☐ RRRI Ineligible

☐ RRRI Ineligibility Waived by DA

☐ Eligible for Re-entry Plan

☐ Electronic Home Confinement (EHC) for \_\_\_\_\_

☐ Active G.P.S. for \_\_\_\_\_ days/weeks/months/years

☐ On-Demand G.P.S. for \_\_\_\_\_ days/weeks/months/years

☐ Passive G.P.S. for \_\_\_\_\_ days/weeks/months/years

☐ Intensive Supervision (Non-D/A Related)

☐ Chronic Substance Abuse Program

☐ No contact w/ \_\_\_\_\_

☐ Other: \_\_\_\_\_

☐ CRN Evaluation/Alcohol Highway Safety School

☐ BAC \_\_\_\_\_

☐ License Surrendered ☐ Affidavit Surrendered

☐ FLAF \$ \_\_\_\_\_

☐ Drug/Alcohol Evaluation & recommended treatment

☐ Mental Health Evaluation & recommended treatment

☐ Mental Health Protocol

☐ Mental Health Court

☐ Anger Management

☐ Domestic Violence Program

☐ Sex Offender Program

☐ Work Release Eligible at Warden's discretion

☐ Sentence may be served at CCP at Warden's discretion

☐ BOOT CAMP Eligible

☐ Non-Reporting during \_\_\_\_\_ if in compliance

☐ Waiver of Supervision Fee

☐ Community Service \_\_\_\_\_ Hrs.

☒ Pay Within 19 months - remainder of sentence

CERTIFIED FROM THE RECORD

This 6th day of May R#B1000058

BY THE COURT:

Patrick Joseph Higgins

Richard C.

Restitution - \$13,120.00  
Fine - \$658.01  
Cost - \$658.01

**TAB 14**

Case: 75CI1:12-cv-00030 Document #: 5 Filed: 05/04/2012 Page 1 of 18

IN THE CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI

PATRICK J. HIGGINS

PLAINTIFF

v.

No. 12, 0030-CI

STATE OF MISSISSIPPI

DEFENDANT

AMENDED COMPLAINT

*Jury Trial Demanded*

COMES NOW the Plaintiff, *Patrick J. Higgins*, and demands a judgment from the Defendant, *State of Mississippi*, and in support of which would show the following:

**PARTIES**

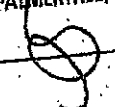
1. The Plaintiff, Patrick J. Higgins, is an adult resident citizen of Massachusetts.
2. Pursuant to Miss. Code Ann. § 11-44-5, the statute governing this case, the Defendant is the State of Mississippi, represented by the Attorney General, who may be served with process at their offices at 450 High Street, Jackson, Mississippi, 39201.

**JURISDICTION AND VENUE**

3. This Court has sole jurisdiction over this matter as provided by statute, as "[j]urisdiction of all claims of wrongful conviction and imprisonment brought under this chapter shall lie in the circuit court of the county in which the claimant was convicted." Miss. Code Ann. § 11-44-5.

**FACTS**

4. Mr. Higgins was arrested on three counts of issuing and delivering "bad checks" in violation of Miss. Code Ann. § 97-19-55, which pursuant to statute are felony charges.
5. In December 1994, Mr. Higgins was convicted of those charges and sentenced to serve three years on each count, to be served consecutively, for a total of nine years.
6. As a result of that conviction, he was incarcerated.

**FILED**  
MAY 04 2012  
SHELLY ASHLEY-PALMERTREE, CIRCUIT CLERK  
BY  D.C.  
**MEC**

7. On March 10, 1998, a unanimous Mississippi Court of Appeals vacated the judgment of conviction. The unpublished Opinion of the Court is attached to this Amended Complaint as Exhibit "A."

8. Specifically, the Court ruled the following: "This Court accordingly reverses and renders the trial court's judgment of Higgins's guilt of three counts of bad check fraud and its sentences for those convictions." Ex. A at 11.

9. After the Court's opinion, the State sought rehearing, which was denied, and then a Writ of Certiorari from the state Supreme Court, which was also denied. *See Docket of Higgins v. State*, attached as Exhibit "B."

10. As a result, Mr. Higgins was still incarcerated until such time as the mandate issued in his case, on or about August 18, 1998. Ex. B.

11. Mr. Higgins was ultimately incarcerated continually for 50 months as a result of his reversed and rendered conviction.

12. After his release, he moved to Massachusetts, where he still resides.

13. Mississippi law states that innocent persons who have been wrongly convicted of felony crimes and subsequently imprisoned have been uniquely victimized, have distinct problems reentering society, and should be compensated. As a result, innocent people who are wrongfully convicted are eligible to receive monetary compensation.

14. Mr. Higgins is one of those innocent people.

#### CAUSES OF ACTION

##### I. COMPENSATION FOR WRONGFUL CONVICTION AND IMPRISONMENT.

15. The above facts and law are incorporated in this section.

16. Mr. Higgins can establish by documentary evidence the elements to prove a claim of Wrongful Conviction and Imprisonment under Miss. Code Ann. § 11-44-3, namely:

A. Mr. Higgins was convicted of three felonies and subsequently sentenced to a term of imprisonment of 9 years, of which he served over 4 years, or 50 months.

B. The conviction and subsequent sentencing and incarceration were on grounds not inconsistent with innocence, as Mr. Higgins' judgment of conviction was reversed and rendered by the Court of Appeals in 1998.

C. "Because there was no evidence that Higgins was the person who had written and delivered these checks," according to the Court, his conviction was also rendered, which serves as a dismissal of the accusatory instrument.

D. Further, Mr. Higgins' claim is not time-barred by the statute. Mr. Higgins' judgment of conviction was reversed and rendered in 1998. The statute provides that "[p]ersons convicted, incarcerated and released from custody prior to July 1, 2009, shall commence an action under this chapter not later than June 30, 2012." Miss. Code Ann. § 11-44-9. As this action was originally filed on February 12, 2012, it is timely filed.

E. The original claim made in February was verified, and this Amended Complaint also carries a Verification by Mr. Higgins after the signature of his counsel.

17. Because Mr. Higgins can establish by documentary evidence the elements to prove a claim of Wrongful Conviction and Imprisonment under Miss. Code Ann. § 11-44-3, he must be compensated.

**Damages**

**I. Compensatory Damages.**

18. The Plaintiff is entitled to compensation pursuant to Miss. Code Ann. § 11-44-87(2)(a), which sets the amount at \$50,000.00 for each year of incarceration. Mr. Higgins was incarcerated for 4 years and two months.

19. Therefore, the Plaintiff prays for the amount under the statute, pro-rated to encompass that time he served into the fifth year of incarceration, and in any event no less than \$200,000.00.

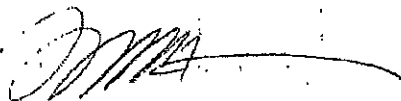
**II. Attorneys Fees and Other Reasonable Costs.**

20. The Plaintiff is also entitled to compensation for his attorney pursuant to Miss. Code Ann. § 11-44-87(2)(b).

WHEREFORE, premises considered, the Plaintiff demands a judgment of and from the Defendant, in accordance with all applicable laws.

RESPECTFULLY SUBMITTED, this the 4th day of May, 2012.

**PATRICK J. HIGGINS,  
THROUGH COUNSEL**



DAVID NEIL McCARTY  
Miss. Bar No. 101620  
DAVID NEIL McCARTY LAW FIRM, PLLC  
416 East Amite Street  
Jackson, Miss. 39201  
T: 601.874.0721  
E: dnmlaw@gmail.com  
W: www.McCartyAppeals.com

### **CERTIFICATE OF SERVICE**

This is to certify that I, Alison O'Neal McMinn, Special Assistant Attorney General for the State of Mississippi, have this date caused to be served, via filing with the MEC electronic system, a true and correct copy of the above *Record Excerpts of Appellee*, to the following:

#### *Attorneys for Appellant*

Sage Egger Harless  
SAGE EGGER HARLESS ATTORNEY AT LAW, PLLC  
sage@harlesslawfirm.com

David Neil McCarty, Esq.  
DAVID NEIL MCCARTY LAW FIRM, PLLC  
dnmlaw@gmail.com

Graham P. Carner  
GRAHAM P. CARNER, PLLC  
graham.carner@gmail.com

And that I have further on this date caused to be served, via U.S. Mail, postage pre-paid, a true and correct copy of the above *Record Excerpts of Appellee* to the following:

#### *The Trial Court*

The Honorable M. James Chaney, Jr.  
Warren County Circuit Court  
P.O. Box 351  
Vicksburg, MS 39181

This the 4<sup>th</sup> day of September, 2015.

BY: s/ Alison O'Neal McMinn  
Alison O'Neal McMinn